MILITARY LAW MADE EASY

3 1761 03595 2472

By

Lieut.-Col. S. T. BANNING

p.s.c., LL.B. (Lond.), B.A., LL.D.

ELEVENTH EDITION

GALE & POLDEN, LTD.
LONDON, ALDERSHOT
AND PORTSMOUTH

PRICE
6/-
NET

Presented to

The Library

of the

University of Toronto

by

Eric Armour, Esq., K.C.

Alexandrow
C.M.O. N.D. du Cap.
Jodoigne 26 2/19.

MILITARY LAW MADE EASY

PRESS OPINIONS OF FORMER EDITIONS.

"When the first edition was published we wrote that we had been able to submit the work to the judgment of an Army tutor, who has for the last twenty years been more especially employed in preparing in Military Law, and that he had reported to us that it was admirably adapted for the object in view, namely, that of enabling officers to prepare themselves for examination, more especially when they were working by themselves. The fact that another edition of the work has already been called for shows that our estimate of the value of Colonel BANNING'S work was very correct. The edition now issued has been brought thoroughly up to date."—*United Service Gazette.*

"The name of the compiler is of itself sufficient to commend it to the favourable attention of the military student or candidate for promotion. Colonel BANNING, besides being the author of several well appreciated and instructive military educational treatises, is specially fitted for the task he has undertaken in the present volume. He holds the degrees of LL.B. (Lond.) and LL.D., is a barrister-at-law of the Middle Temple, and an Instructor in Military Law at the Royal Military College, Sandhurst. . . . The contents fully justify the title of the handbook, "MILITARY LAW MADE EASY," a subject to which the Author has brought the experience of over ten years as an instructor."—*Broad Arrow.*

"In the previous review, given in the U.S.M., it was stated that 'this is not a cram book, but honestly tries to teach the student what to learn and how to learn it.' The writer holds the same opinion still, and most willingly repeats it."—*United Service Magazine.*

"Colonel BANNING speaks with unusual authority on the subject, for he is a barrister as well as a military expert. Military Law . . . undoubtedly must present difficulties, since so many works of this nature continue to appear. This one in question, at any rate, is well done."—*Saturday Review.*

"An excellent catechism of the subject, systematic, clear and easy for reference, and although written for a special purpose it will also be useful to the general reader or student interested in British Military Law."—*Journal of the United States Artillery.*

"A standard military educational work, and is almost indispensable to all Officers who are going up for the examination. . . . the author has succeeded admirably in his task."—*New Zealand Press.*

"The present edition of 'MILITARY LAW MADE EASY' will easily maintain the reputation long held by the edition it displaces—that of being at once a sound educational treatise and a standard book of reference."—*Liverpool Mercury.*

"Another edition of Colonel BANNING'S useful and thoroughly practical hand-book."—*Madras Mail.*

"The recent orders, permitting the use of books at examinations on Military Law, will not detract from the utility of the present edition. Candidates require more than ever to know their way thoroughly about the official books, and as Major BANNING invariably gives his references, his book should form a useful *vade mecum*"—*Times of India.*

Const
D2195m.3

GALE & POLDEN'S MILITARY SERIES

MILITARY LAW MADE EASY.

WITH APPENDICES OF

EXAMINATION PAPERS, FULLY ANSWERED

WITH REFERENCES TO THE OFFICIAL BOOKS.

BY

LIEUT.-COLONEL S. T. BANNING,

Late Royal Munster Fusiliers,
P.S.C.; LL.B. (LOND.); B.A., LL.D. (R.U.I.);
of the Middle Temple, Barrister-at-Law;
Formerly Instructor in Military Law, R.M.C.;
Late A.A.G., Eastern Command.

AUTHOR OF

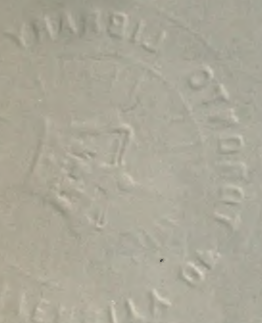
"Organization, Administration and Equipment Made Easy,"
"Regimental Duties Made Easy,"
"The Soldier's Pocket Manual," etc.

ELEVENTH EDITION.

LONDON: GALE & POLDEN, LTD.,
2, AMEN CORNER, PATERNOSTER ROW, E.C. 4;
WELLINGTON WORKS, ALDERSHOT;
AND NELSON HOUSE, PORTSMOUTH.
Or of all Booksellers.

SIX SHILLINGS (Net).

(ALL RIGHTS RESERVED.)



ALDERSHOT:
PRINTED BY GALE & POLDEN, LTD., WELLINGTON WORKS.

1917.

P. 3,849.

PREFACE TO THE FIRST EDITION

The publication of a fresh work on Military Law appears to demand a few words of explanation, if not of apology, for its appearance, as there are so many treatises on this subject, of varying merits, already before the public. This volume is intended to form one of GALE & POLDEN'S "MILITARY SERIES," and is specially prepared to assist Officers reading for the Promotion Examination; the subject has, therefore, been dealt with entirely from that point of view and closely follows the Syllabus laid down in Queen's Regulations, Appendix VII. All Officers should consult the official books in preparing for this Examination, since it is these—"The Manual of Military Law" and the "Queen's Regulations"—which they will be allowed to use in answering the first paper; hence it becomes of vital importance that they should "know their way about" them, and be able to quickly "quote chapter and verse" for their statements. An experience of over ten years as an Instructor in Military Law has, however, convinced me that these official volumes are rather confusing to a student getting up the work, more especially if he is working alone, and, perhaps, as in the case of Officers of the Auxiliary Forces, with little previous knowledge of the subject. It is with a view, therefore, of presenting a systematic account of that portion of Military Law necessary for the Examination that this book has been written. The Papers set at the last three Examinations have been added, fully answered, with references to the official books. Students will do well to verify these references, not only to test the accuracy of the answers given, but to train themselves in the knowledge of what part of our Military Code deals with any particular point. The questions at the end of the Chapters have been taken from the Papers set at the R.M.C. from July, 1895, to December, 1900.

S. T. B.

R.M.C.,
March, 1901.

PREFACE TO THE ELEVENTH EDITION.

The various amendments in the Law and Regulations which have been made since the last edition of this book was published have been noted where necessary. I am indebted to Mr. P. Sutherland Græme, of Lincoln's Inn and the South Eastern Circuit, Barrister-at-Law, and of the Judge-Advocate-General's Department, for kindly reading the proofs of this edition and assisting me with his advice.

S. T. B.

LONDON,
October, 1917.

CONTENTS.

PART I.

LIEUTENANTS, FOR PROMOTION TO CAPTAIN.

CHAPTER		PAGE
I.—INTRODUCTORY		1
II.—THE MILITARY CODE		3
III.—PERSONS SUBJECT TO MILITARY LAW		7
	Always	7
	At stated times	7
	Modifications in the Application of the Act	10
IV.—CRIMES AND PUNISHMENTS...		15
	Scale of Punishments	15
	Offences in respect of Military Service ...	22
	Mutiny and Insubordination	24
	Desertion, Fraudulent Enlistment, and Absence without Leave	29
	Disgraceful Conduct	33
	Drunkenness	35
	Offences in relation to Persons in Custody	36
	Offences in relation to Property	37
	Offences in relation to False Documents and Statements	38
	Offences in relation to Courts-Martial ...	40
	Offences in relation to Billeting	41
	Offences in relation to Impressment of Carriages	41
	Offences in relation to Enlistment	42
	Miscellaneous Military Offences	43
	Offences Punishable by Ordinary Law ...	44
V.—ARREST OF OFFENDERS AND INVESTIGATION OF CHARGES		49
	Arrest and Confinement	49
	Investigation of Charges	53

CHAPTER		PAGE
VI.	POWERS OF COMMANDING OFFICERS	59
	In the case of a Private Soldier	59
	In the case of Non-Commissioned Officers...	64
	Powers of Officers Commanding Companies and Detachments	65
VII.	PROCEEDINGS BEFORE TRIAL	72
	Summary of Evidence	72
	Framing Charges	73
	Application for Trial	78
	Duties of Convening Officer	80
	Defence	81
VIII.	COURTS-MARTIAL : THEIR DESCRIPTION, COMPOSITION, AND POWERS	85
	General Court-Martial	85
	District Court-Martial	87
	Regimental Court-Martial	88
IX.	JURISDICTION	91
X.	COURT-MARTIAL PROCEDURE	95
	President : Duties of	95
	Judge-Advocate	96
	Preliminary Proceedings	97
	Prosecutor	100
	Counsel	101
	Challenge	102
	Arraignment	104
	Proceedings on Plea of "Not Guilty" ..	108
	Prosecution	108
	Defence	110
	Finding	112
	Proceedings on Plea of "Guilty"	113
	Proceedings on Conviction	114
	Sentence	114
XI.	CONFIRMATION AND EXECUTION OF SENTENCES	125
	Revision	125
	Remission, etc.	127
	Approval by Civil Governors	128
	Promulgation	128
	Execution of Sentences	129
	Provost-Marshal...	131
	Remission, etc., *after* Confirmation	132
	Restitution of Stolen Property	133
	Loss of Proceedings	133
	Preservation of Proceedings	133
XII.	FIELD GENERAL COURTS-MARTIAL	135
	Differences in Procedure	136
XIII.	EVIDENCE	138
	What must be Proved	138

CHAPTER		PAGE
XIII.—Evidence—(*Continued*)		
	Burden of Proof	140
	Admissibility of Evidence	141
	Hearsay	143
	Evidence as to Character	146
	Acts and Statements of Conspirators	147
	Documents made Evidence by the Army Act	147
	Primary and Secondary Evidence of Documents	148
	Circumstantial Evidence	150
	Opinion	150
	Admissions and Confessions	152
	Competency of Witnesses	153
	Privileges of Witnesses	155
	Examination of Witnesses	158
XIV.—Courts of Inquiry and Boards		163
XV.—Discipline on Board ship		165
XVI.—Enlistment, etc.		168
XVII.—Miscellaneous		173
	Exemptions of Officers and Soldiers	173
	Liability to Maintain Wife and Children	175
	Liabilities of Civilians	176
	Definitions	177
	Company Conduct Sheets	179
	Regimental Conduct Sheets	182
	Field Conduct Book	185
XVIII.—Customs of War		186
	Belligerents	187
	Means of carrying on War	189
	Spies and Stratagems	190
	Prisoners of War	191
	Sick and Wounded	194
	Intercourse between Belligerents	195
	Military Occupation of Hostile Territory	197

PART II.

Captains, for Promotion to Major.

XIX.—Billeting and Impressment of Carriages		201
	Billeting	201
	Impressment of Carriages	202

CHAPTER PAGE

XX.—Duties in aid of the Civil Power 204

XXI.—History of Military Law 211

XXII.—The Law relating to the Reserve Forces 213

XXIII.—The Law relating to the Militia 218

XXIV.—The Law relating to the Territorial Forces 220

XXV.—The Law relating to the Volunteer Force 224

XXVI.—Relation between Civil and Military Law 227

XXVII.—Regulations under the Regimental Debts Act, 1893 230

APPENDICES.

A. Papers Set at the Examination of Lieutenants, with Answers 235

B. Papers Set at the Examination of Captains, with Answers 277

REFERENCES.

A. (Amend.) Act	Army (Amendment) Act, 1915.
A. (Amend.) Act, No. 2	Army (Amendment) Act, No. 2, 1915.
A (Ann.) Act ...	Army (Annual) Act.
A.M.R.... ...	Regulations for the Army Medical Service, 1906.
A.O.	Army Orders.
A.R. Reg. ...	Regulations for the Army Reserve, 1911.
A. (Susp. Sent.) Act	Army Suspension of Sentences) Act, 1915.
A. (Susp. Sent.) Amend. Act...	Army (Suspension of Sentences) Amendment Act, 1916.
A. (Trans.) Act	Army (Transfers) Act, 1915.
Clode	"The Military Forces of the Crown," by C. M Clode, 2 vols., 1869.
Clode, Mil. Law	"Military and Martial Law," by C. M. Clode ; 2nd Edition, 1874.
Dicey	"The Law of the Constitution," by A. V Dicey, B.C.L. ; 3rd Edition, 1889.
Hall	"International Law," by W. E. Hall, M.A., 4th Edition, 1895.
Harris	"Principles of the Criminal Law," by S. F. Harris, B.C.L., M.A. ; 8th Edition by C. L. Attenborough, 1899.
Holls	"The Peace Conference at the Hague," by F. W. Holls, D.C.L., 1900.
I.Army Act ...	Indian Army Act, 1911.
I.A.R.	Army Regulations, India, 1913.
K.R....	King's Regulations, 1912. (Reprint 1914.)
Man.	Manual of Military Law, 1914.
Mart. Law ...	Papers Relating to the Administration of Martial Law in South Africa, 1902.

M.S. Act... ...	Military Service Act, 1916.
M.S. Act (Sess. 2)	Military Service Act, 1916 (Session 2).
N.F. Act... ...	Naval Forces (Service on Shore) Act, 1916.
O'Dowd	"Hints to Court-Martial." by J. C. O'Dowd ; 2nd Edition, 1883.
Powell	"Powell's Principles and Practice of the Law of Evidence"; 7th Edition by J. Cutler, B.A., and C. F. Cagney, 1898.
R.D. Act... ...	Regimental Debts Act, 1893.
R.D. Reg. ...	Regulations under the Regimental Debts Act, 1893.
R.F. Act	Reserve Forces Act, 1882.
R.F. & M. Act	Reserve Forces and Militia Act, 1898.
R.P.	Rules of Procedure, 1907.
R.R.	Recruiting Regulations, 1912.
R.S.R.	Regulations for the Special Reserve, 1911.
R.W.	Royal Warrant for Pay and Promotion, 1914.
s.	Section of Army Act, 1881.
Stephen	"Digest of Law of Evidence," by the late Sir J. F. Stephen, Bart., K.C.S.I., D.C.L. ; 6th Edition by Sir H. Stephen, Bart., and H. L. Stephen, 1899.
Stephen, Crim.	"Digest of the Criminal Law," by the late Sir J. F. Stephen, Bart., K.C.S.I., D.C.L. ; 5th Edition by Sir H. Stephen, Bart., and H. L. Stephen, 1894.
T.F.R.	Regulations for the Territorial Force, 1912, (Reprint 1914.)
T. & R.F. Act	Territorial and Reserve Forces Act, 1907.
Vol. Act ...	Volunteer Act, 1863.
Vol. Act, 1916	Volunteer Act, 1916.

SYLLABUS OF EXAMINATION.

The Manual of Military Law and the King's Regulations will be allowed for answering all Military Law papers.

ONE PAPER

Lieutenants, for Promotion to Captain.

Manual of Military Law.	Chapter I., II. (paras. 33—35 only), III., IV., V., VI., XIV. The Army Act, omitting Part III. The Rules of Procedure.
King's Regulations	Paras. 301—305, 431—599, 666—678, 955—975, 1909, 1916—1925.

Captains, for Promotion to Major.

Manual of Military Law.	Chapters I.—VI., XII.—XIV. The Army Act. The Rules of Procedure.
King's Regulations	Paras. 301—305, 431—678, 955—975, 1909, 1916—1935.

MILITARY LAW MADE EASY

SUPPLEMENT

Owing to the delay which has taken place in the publication of this edition, several important changes have been made in the law since it was passed for the press by me in October last. In April the Royal Air Force was established, and the Act constituting this Force made several amendments in the Army Act. The Army (Annual) Act of this year also made some important amendments.

In order to include these amendments and the changes made by Army Orders since last October, the following pages of "Amendments" have been prepared, by means of which this edition can be brought up to date by those using the book.

S. T. B.

London,
October, 1918.

AMENDMENTS

Page xiii. After line 4 *insert*—

"A.F. Act .. Air Force Act."

"A.F. (Const.) Act Air Force Constitution Act, 1917."

Page xiv. After line 19 *insert*—

"Simmons .. 'The Constitution and Practice of Courts-Martial,' by Captain T. F. Simmons, R.A., Deputy Judge-Advocate; 7th edition, by T. F. Simmons, Deputy Judge-Advocate, 1875."

„ 3, line 28. *Add* "Any such amendments come into force in any place from the date from which the Army Act is continued in force in that place (*vide* note on next page).

A. (Ann.) Act, 1904, s. 14."

„ 7. After the last line *add* "Officers of the Air Force, when attached to, or seconded for service with, the Regular Forces.

A.F. (Const.) Act, s. 7."

„ 8. After the last line *add* "Airmen of the Air Force when attached to Regular Forces.

A.F. (Const.) Act, s. 7."

„ 10. After line 7 *add* "*Note.*—A person's liability to military law is not affected by the fact that he is a subject of a foreign State.

Clode, Mil. Law, p. 94."

„ 12, line 6. After "Forces" *insert* "or when officers or soldiers of the Military Forces are acting with, or attached to, any Naval Force."

Page 12, line 8. *Dele* "they" and *insert* "the Officers or Petty Officers of the Navy are to be treated and."

,, 12, line 11. *Add* "**s. 184A (1), (2) ; A.O. $\frac{160}{15}$.**"

,, 12. After line 11 *add* "A similar provision is made in the case of Officers and Non-Commissioned Officers of the Army and Air Force acting together under conditions prescribed by the Army Council and Air Council. **s. 184A (1A), (2A) ;**
A.F. (Const.) Act, s. 7 ; A.O. $\frac{109}{18}$."

,, 12. After line 29 *add* "As regards Officers and men of the Air Force, the Air Council or Officers appointed by them have the powers given by the Act to the Army Council and various military authorities. A General Court-Martial for their trial can only be convened by the King or an Officer having a warrant under the Air Force Act, except in special cases beyond the seas. If an Officer or man of the Air Force, while subject to military law, commits an offence for which he is not answerable under the Army Act, but for which he is liable under the Air Force Act, he can be tried under the latter Act. **s. 179** (A)."

,, 16. *Transpose* the last sentence of paragraph 5 to follow after the word "*note*" in this paragraph.

,, 16. After the reference "R.W. 297" in this sentence *add* "An Officer who has been cashiered or dismissed from the Service will be called up for service in the ranks under the Military Service Acts."

Page 16, line 24. After "Officer" *insert* "and he is liable to be removed for misconduct, or even if not guilty of actual misconduct may be called upon to retire or resign his commission if the Army Council consider it necessary. **R.W. 525, 527."**

„ 16. *Add a footnote* "Under the Forfeiture Act, 1870, an Officer convicted of treason or felony and sentenced to death, penal servitude, or imprisonment with hard labour, or exceeding twelve months, will forfeit his commission, or any employment under the Crown, or any pension.
33 & 34 Vict., c. 23, s. 2."

„ 18. After line 29 *add* "A Non-Commissioned Officer or private of the Territorial Force is also liable to dismissal. **s. 181 (6)."**

„ 19, line 25. After "pension" *insert* * and *add footnote:* *"No provision is made in the Royal Warrant for forfeiture of pension by sentence of Court-Martial, hence this forfeiture cannot be awarded."

„ 19, line 26. After "R.W." *insert* "765, 785, 1095, 1114."

„ 19, line 32. For "765, 1095, 1114, 1137" *read* "785."

„ 20, line 2. After "loss" *insert* "expenses."

„ 20, line 37. For "now in force, a" *read* "an Officer or."

„ 20, line 38. After "absence" *insert*
"ss. 44 (12), 136, 138 (1); R.W. 304, 977."

„ 21, line 4. After "person" *add* "but no period of less than twenty-four hours can be reckoned as more than one day."

Amend the references to *read*
"s. 140 (2); A. (Ann.) Act, 1918, s. 8; R.W. 978."

Page 21, line 13. *For* " 2 " *read* " 1."

,, 21, line 20. *For* " 2 " *read* " 1."

,, 21, line 23. *For* " 3 " *read* " 2."

,, 21. After line 24 *insert* " Private I. absent from Tattoo 3rd May till 12.30 a.m. 6th May. Forfeits 3 days' pay."

,, 27. After line 7 *insert* new paragraph : " But so long as the orders of the superior are not obviously in opposition to the well-known and established customs of the Army or the law of the land, or if in opposition to such laws do not tend to an irreparable result, so long must the orders of a superior meet prompt, immediate, and unhesitating obedience.

Simmons, p. 255."

,, 31, line 8. After " forces " *insert* " or the Air Force."

,, 31, line 9. *Add* reference.

" A.F. (Const.) Act, s. 7."

,, 35, line 8. After " property " *insert* " as the expression ' regimental ' is defined as meaning connected with a corps, or battalion, or other subdivision of a corps.

s. 190 (17)."

,, 35, line 19. *Dele* " 286."

,, 38, lines 10 and 13. *Dele* " military."

,, 38, line 21. After " horse " *insert* " or other animal."

,, 39, line 3. *Dele* " or by Officers on promotion."

,, 39, line 5. *Add* reference **" O'Dowd, p. 83."**

,, 42, line 2. After " grace " *insert* " from any part of the military or air forces."

,, 42, line 3. After " Navy " *insert*

" A.F. (Const.) Act, s. 7."

,, 50, line 8. *Add* to reference

" Clode, Mil. Law, p. 82."

Page 63, line 10. *Add* " and the aggregate punishment of detention and confinement to barracks must not exceed 42 days."

,, 64. After line 22 *insert* " An Acting Warrant Officer (Class I or II) whose permanent rank is below that of Non-Commissioned Officer may be similarly dealt with by his Commanding Officer."

,, 75. After line 29 *insert* " These words ' when on active service ' should be inserted in all charges for offences committed by soldiers on active service to enable the Court to award a sentence of field punishment or forfeiture of pay."

,, 76, line 14. *Dele* " only " and *for* " those " *read* " all."

,, 76, line 15. *Dele* all the remainder of the sentence after the word " property."
Dele * and footnote.

,, 76, line 17. *Add* to reference **" A.O. $\frac{115}{18}$."**

,, 100, line 30. After " 24 " *insert* " In a difficult case the Convening Officer should detail a specially qualified Officer. **K.R. 573."**

,, 103. After line 27 *insert* " (except as the Army Council may direct, to communicate the sentence to the accused)."

,, 103, line 29. *Add* to reference
" A. (Ann.) Act, 1918, s. 6."

,, 105, line 30. After " Officer " *insert* " (this finding does not require confirmation)."

,, 106, line 36. *For* " Convening " *read* " Confirming."

,, 106, line 37. After " trial " *add* " If the finding is not confirmed, the Court may be reassembled. and the trial will proceed as if the plea had not been allowed."

Page 106, line 38. After " (C) " *insert* " (D)."

.. 115, lines 36-38. *Transpose* the sentence " If it . . . be added " to follow after line 9 on page 116.

,, 115, line 43. *Dele* from " In " to end of page. *Add* new paragraph : " When the sentence is death, the President will communicate the sentence forthwith to the accused on a special Army Form under sealed cover, and will attach a certificate to the Proceedings that this has been done."

,, 116, Before line 1 *insert* a fresh line : " Sentences of imprisonment or detention must be framed as follows :—"

.. 116, line 25. *Dele* " penal servitude or."

.. 116, line 26. *Dele* " (*a*)," *for* " (*c*) " *read* " (*d*)."

,, 116, line 30. *Dele* " penal servitude or."

,, 117, line 2. *Dele* " penal servitude."

,, 125, line 10. *Add* " (other than a Field General Court-Martial)."

.. 127, line 25. After " another " *insert* " or others."

,, 132. After last line *add* new paragraph : " If, after confirmation, a sentence is found to be invalid, the Authority who would have had power to commute may pass a valid sentence, provided that it is not higher in the scale of punishments than the invalid sentence, nor, in his opinion, in excess of it. **s. 70 (1) (c) ; R.P. 54 (c)."**

.. 136, line 32. After " Procedure " *insert* " except those mentioned in R.P. 121."

,, 148, line 8. After " Regulations " *insert* " or of military duty."

Page 148. After line 9 *insert* " The list of documents comprised in the expression ' Regimental Books ' as given in K.R. 1880."

,, 148, line 19. After " unit " *insert* " Provost-Marshal."

,, 148, line 20. After " Officer " *insert* " in charge of a Police Station."

,, 148, line 31. After " Advocate " *insert* " General."

,, 150, line 4. *Dele* " two."

,, 150, line 8. After " Statute " *insert* * and *dele* " 7 and 8."

,, 150, line 9. *Dele* " William III, c. 3, ss. 2, 4 ; and."

,, 150, line 13. After " credible " *add* " and (3) offences under the Criminal Law Amendment Act, 1885."

,, 150. *Add* footnote : " * 7 and 8 Will. III, c. 3, s. 2 ; 36 Geo. III, c. 7, s. 1."

,, 167, line 4. *Add* " If the troops were on active service, he could also convene a Field General Court-Martial."

,, 175, line 14. *For* " 6d." *read* " 7d."

,, 175, line 15. After " 1s." *add* " 1d."

,, 175, line 17. After " 1s." *add* " 1d." ; and *for* " 7d." *read* " 8d."

,, 175, line 19. *For* " 6d." *read* " 9d."

,, 175, line 20. *For* " 4d." *read* " 6d."

,, 175, line 23. *For* " 1913, s. 6 " *read* " 1918, s. 10."

,, 175. *Dele* line 24.

,, 176, lines 33-35. *Dele* from " first offence " to " second offence," both inclusive.

,, 176, line 38. After " months " *add* " or both.'

PART I.

LIEUTENANTS, FOR PROMOTION TO CAPTAIN.

MILITARY LAW
MADE EASY.

CHAPTER I.

INTRODUCTORY.

Military Law is the law which governs Officers and soldiers in peace and in war, at home and abroad. It is contained partly in Acts of Parliament and partly in Regulations, framed under the authority of the Statute Law, as will be explained in the next Chapter. **Man., I., 3.**

As distinguished from the ordinary civil law it is the law relating to, and administered by, Military Courts, and is chiefly concerned with the trial and punishment of offences against its enactments committed by Officers and soldiers. It must always be remembered that a British subject, by becoming an Officer or soldier, does not remove himself outside the pale of the ordinary law of the Realm, to which he remains in every way amenable, except in so far as he is specially exempted; but in addition to his ordinary liabilities as a citizen he is also governed by laws which do not affect civilians.

s. 162 (2); Man., II, 1; Dicey, pp. 276, 277.

The object of Military Law is to maintain discipline among the troops and those who accompany an army on active service. With this object, offences which in civil life would be punished by a small fine, *e.g.*, assault, or would be merely breaches of contract, *e.g.*, desertion or neglecting to obey orders, are in the Army dealt with as crimes and render an offender liable to heavy penalties. **Man., II., 2.**

But in addition to disciplinary matters, Military Law is concerned also with administrative law, as for example the law regulating recruiting and billeting. This part of

Military Law affects civilians as well as soldiers, and breaches of it render them liable to be dealt with by the Civil Courts. **ss. 96—99, 102—110; Man., II., 1.**

Martial Law must be carefully distinguished from Military Law. The object and scope of the latter are as just defined, and its provisions are clearly laid down in the Military Code. Martial Law on the other hand is in reality no law at all and strictly speaking is not recognized by English jurisprudence. As used in the preamble of the Army Annual Act it is now synonymous with Military Law. It is, however, sometimes used in two different senses, (*a*) in connexion with riots and insurrections, (*b*) in connexion with the government of an occupied territory by the Commander of an invading army.

In the former sense it must be understood merely to mean that military force will be used against the rioters to reduce them to subjection; but in contemplation of the law these rioters always remain subject to the ordinary law of the Realm, as do the troops employed in quelling the riot, whose rights and liabilities in the performance of this duty differ in no respect from those of ordinary citizens. This subject is dealt with more fully in Chapter XX.

Man., I., 4, 15; Dicey, pp. 265—268.

In the latter sense it forms part of what are known as the "Customs of War," which are dealt with at length in Chapter XVIII. By these customs, for the most part tacitly, or in some cases explicitly, agreed on between civilized nations, the Commander of an army in occupation of a foreign country governs his own troops by the Military Law of his country, while he imposes such laws and regulations on the inhabitants as he deems necessary for the security of his forces and the maintenance of good order among the population. It is in this sense that Martial Law has been described as "the will of the Commander."

Man., I., 5, 6; XIV., 340—404; Hall, sec. 156.

QUESTION.

1. Give a brief description of Military Law.

CHAPTER II.

THE MILITARY CODE.

The code of Military Law is laid down partly in Acts of Parliament, and partly in Regulations made under the authority of those Acts or in accordance with the custom of the Service.

The chief Acts of Parliament relating to Military Law are the Army Act, 1881 ; the Army (Annual) Act ; the Reserve Forces Act, 1882 ; the Militia Act, 1882 ; the Regimental Debts Act, 1893 ; the Reserve Forces and Militia Act, 1898 ; and the Territorial and Reserve Forces Act, 1907.

The Army Act, which was passed in 1881, embodies the contents of the old Mutiny Acts and former Enlistment Acts, and thus the greater part of the Statute Military Law has been codified. In order, however, to continue the constitutional principle of Parliamentary sanction to the maintenance of a Standing Army, it is expressly enacted in s. 2 that the Act is only to remain in force for such time as may be specified in an Annual Act bringing it into force or continuing it.

It is divided into five parts, dealing respectively with the following subjects :—

Part I. Discipline.
Part II. Enlistment.
Part III. Billeting and impressment of carriages.
Part IV. General provisions.
Part V. Application of military law, saving provisions, and definitions. s. 3.

Any necessary amendments are made by the Army (Annual) Act, which is passed in the spring of each year.

The Army (Annual) Act commences with a preamble, which is practically the same as that of the former Mutiny Acts, stating the necessity for the maintenance of a Standing Army, and fixing the number of men to be kept up for the next twelve months (exclusive of those in India), and the necessity for trying and punishing offences against military

discipline in a more exemplary and speedy manner than the ordinary law allows; s. 1 gives the short title of the Act; s. 2 continues the Army Act in force for a further twelve months, commencing from different dates in various parts of the world*; s. 3 fixes the prices to be paid for billets during the ensuing year; and other sections are added when any amendments are required in the Army Act.

The principal Regulations are :—

Rules of Procedure, made by the King, through a Secretary of State, under the authority of the Army Act, s. 70. These Rules must not contain anything contrary to or inconsistent with the Act, and are to be "judicially noticed" by all Courts of Law. They deal with :—

(*a*) The assembly and procedure of Courts of Inquiry.

(*b*) The convening, constitution, and procedure of Courts-Martial.

(*c*) The confirmation, revision, and execution of findings and sentences of Courts-Martial.

(*d*) Making the necessary forms of orders relating to Courts-Martial.

(*e*) Any other matters necessary for carrying the Army Act into effect. **s. 70.**

Orders in Council, made by the King in Council, under the authority of various Acts of Parliament, *e.g.* :—

Order in Council of the 6th February, 1882, respecting discipline on board H.M. Ships, made under the authority of the Naval Discipline Act, as amended by Orders in Council of the 30th June, 1890, and 13th February, 1912. **Man., p. 728.**

Orders in Council of the 20th April, 1917, defining the duties of the Members of the Army Council, and of the Inspector General of the Forces, made under the authority of 33 & 34 Vict., c. 17.

---

* (*a*). In the United Kingdom, Channel Islands, and Isle of Man from 30th April.
(*b*). Elsewhere, whether within or without the King's dominions from 31st July.

Royal Warrants, made by the King under the Royal Sign Manual and issued by the Secretary of State; they are promulgated to the Army in Army Orders. They deal with matters of finance, and the appointment and promotion of Officers, and the conditions of retirement of Officers and men, *e.g.*, Royal Warrant for Pay.

King's Regulations, issued by the Army Council.

Army Orders, issued monthly by the Army Council, with the approval of the Secretary of State. They deal with questions of discipline, organization, training, etc.; and amendments in existing Regulations are notified in them.

It may, perhaps, be useful here to remark that the Army Act and Rules of Procedure, as bound up in the Manual of Military Law, with notes, are only so published for the convenience of Officers and others in the Army. The notes printed in smaller type after the section of the Act, or the Rule, to which they refer, have not the same authority as the Act itself or the Rules of Procedure, though, as they are issued with the official sanction of the War Office, they have, of course, great weight, and should not be lightly disregarded. In referring to the Army Act or the Rules of Procedure, the *Section* or *Rule* should be quoted, and not the page of the Manual upon which it appears. Thus :—

Army Act, s. 10; or R.P. 83 (B).

Similarly, the King's Regulations are quoted by *paragraphs;* thus, K.R., para. 460; and the Royal Warrant for Pay by *articles*, thus R.W., art. 946.

It should be noted that the "custom of the Service" is expressly recognized both by the Army Act and the Rules of Procedure, and would ordinarily be held to be a justification for anything done in pursuance of such custom.

s. 171; R.P. 129, 131.

QUESTIONS.

1. Enumerate the various enactments and regulations that constitute the present Military Code, and state the authorities by whom they are respectively issued.
2. Enumerate the headings of the five parts into which the Army Act is divided. How are amendments to the

Act, that may from time to time be required, brought into force ?

3. Point out why it is necessary to have an Army (Annual) Act, and give a brief summary of its contents, irrespective of any particular year.

4. Who has power to make Rules of Procedure, and whence is that power derived ? Specify the principal subjects with which these rules can lawfully deal.

5. Point out how the following portions of the Military Code affect one another : The Army (Annual) Act and the Army Act ; the Army Act and the Rules of Procedure ; the King's Regulations and Orders for the Army and Army Orders ; Army Orders and Royal Warrants.

6. Military discipline is enforced partly by *law* and partly by *regulation*. Enumerate the various constituents of the Military Code which would come under the above general headings.

7. With what subjects does the Army Act deal ? How is the Act brought into operation ? In what relation do the Rules of Procedure stand with reference to the Army Act ?

8. Give a brief description of Military Law, and state how the Army Act is continued in force.

CHAPTER III.

PERSONS SUBJECT TO MILITARY LAW.

All persons, who are subject to Military Law, are so subject either as *Officers* or as *Soldiers*.

Again, some such persons are always subject, while others are only subject at stated times, and under certain conditions.

The following tables show the various individuals who are subject in either class :—

A. Subject Always.

(i.) *As Officers.*

Officers of the Regular Forces on the active list (includes Officers on half-pay). **s. 175 (1).**

Officers of the Permanent Staff of Auxiliary Forces. **s. 175 (2).**

Officers of the Special Reserve. **s. 175 (10).**

Officers of the Territorial Force, including the Territorial Force Reserve. **s. 175 (3A) ; T.F.R., App. xxvii., para. 4.**

Officers of Colonial Forces, raised at the Imperial expense (*e.g.*, Royal Malta Artillery). **s. 175 (4).**

Officers of Volunteers who have signed an agreement to undergo such training or do such military duties as are specified in the agreement. **Vol. Act, 1916, s. 1 (4).**

(ii.) *As Soldiers.*

Soldiers of the Regular Forces. **s. 176 (1).**

Non-Commissioned Officers and men of the Permanent Staff of Auxiliary Forces. **s. 176 (2).**

Soldiers of Colonial Forces, as above. **s. 176 (3).**

B. Subject at Stated Times.

(i.) *As Officers.*

Officers of the Regular Forces not on the active list employed on military duty under an Officer of the Regular Forces. **s. 175 (1).**

Officers of Marines, when not borne on the books of any King's ship. **ss. 179 (15), 190 (8).**

Officers of Volunteers, when—

(*a*) Commanding men subject to Military Law.

(*b*) Attached to regulars or troops subject to Military Law.

(*c*) Ordered on duty with their own consent.

(*d*) Their Corps is on actual military service.

s. 175 (5), (6).

Persons accompanying troops on active service in an official capacity equivalent to that of an Officer (*e.g.*, Political Agents, and the Matrons, Sisters and Staff Nurses of the Military Nursing Service). **s. 175 (7).**

Persons accompanying troops on active service holding a pass from the Commanding Officer of the force entitling them to the status of an Officer (*e.g.*, contractors, or newspaper correspondents).* **s. 175 (8).**

Officers of the Reserve (other than Special Reserve) when ordered on any duty or service to which they are liable.

s. 175 (10).

Officers of any Force raised in India or a Colony, when attached to or doing duty with any portion of the Forces in the United Kingdom. **s. 175 (11).**

Officers of the Indian Army Reserve, when called out in any military capacity. **s. 175 (9).**

(ii.) *As Soldiers.*

Pensioners employed on military service under the orders of an Officer of the Regular Forces. **s. 176 (4).**

This only includes those employed on duties which they are only qualified to perform *quâ* pensioner; and does not include pensioners performing duties which could be done equally by civilians.

Non-Commissioned Officers and men of the Marines, when not borne on the books of any King's ship.

ss. 179 (15); 190 (8).

---

* The Regulations as to civilians with an Army in the field are laid down in **Field Service Regulations, Pt. II., s. 142—146.**

Non-Commissioned Officers and men of the Reserves,* when—

(*a*) Called out for training or exercise.

(*b*) Called out in aid of the Civil Power.

(*c*) Called out on permanent service.†

(*d*) Employed on military service under the orders of an Officer of the Regular Forces.

s. 176 (5).

Non-Commissioned Officers and men of the Territorial Force, including the Reserve Division, when—

(*a*) They are being trained or exercised.

(*b*) Attached to regulars.

(*c*) Embodied.

(*d*) Called out for actual military service for purposes of defence.

s. 176 (6A); T.F.R., App. xxvii., para. 4.

Non-Commissioned Officers and men of the Volunteers, when—

(*a*) Training with regulars or militia.

(*b*) Attached to regulars.

(*c*) Their Corps is on actual military service.‡

Note.—That in any case, except the last, they must be warned beforehand by their Commanding Officer that by going on the service they will become liable to military service.

s. 176 (8).

(*d*) They have signed an agreement to undergo such training or perform such military duties as are specified in the agreement; while engaged in such training or duties.

Vol. Act, 1916, s. 1 (3).

---

* This includes the Special Reserves, who are part of the Reserve Forces. **T. & R. F. Act, s. 30 (1).**

† They are deemed to be called out on permanent service from the time fixed for them to attend in the notice calling them out. **R.F. Act, s. 12 (3).**

‡ They are deemed to be on actual military service from the time their Corps is called out. **Vol. Act, s. 17.**

Non-Commissioned Officers and men of any Force raised in India or a Colony, when attached to or forming part of any portion of the Forces in the United Kingdom.

s. 176 (8A).

Persons employed by, or in the service of, any of H.M. troops on active service. **s. 176 (9).**

Camp followers on active service. **s. 176 (10).**

MODIFICATIONS IN THE APPLICATION OF THE ACT.

In applying the Act to certain people included in the foregoing classes, some modifications are made, of which the following are the chief :—

In the case of Officers, soldiers, or followers, who are natives of India, Indian Military Law, as laid down in the Indian Army Act made by the Government of India, is to be followed. Half-castes and persons born in India of certain degrees of European descent are for the purposes of the Army Act considered Europeans. **s. 180 (2).**

European Officers of the Indian Army and European Non-Commissioned Officers and men serving in the Indian Army Departments are subject to the Act as Officers or soldiers of the Regular Forces. **s. 190 (8).**

In this connexion the following notes regarding the various grades of the subordinates of the Indian Medical Service may be useful :—

Senior Assistant-Surgeons are Officers with honorary rank ;

Assistant-Surgeons, of whom there are four classes, are Warrant Officers.

All the above are subject to the Army Act.

I.A.R. Vol. II., 281

Senior Sub-Assistant-Surgeons, 1st and 2nd Class, are Indian Officers ;

Sub-Assistant-Surgeons, of whom there are three classes, are Indian Warrant Officers.

These are all subject to the Indian Army Act.

I. Army Act, s. 2 (1) ; I.A.R., Vol. II., 283.

*Warrant Officers holding honorary commissions are subject to military law as Officers; those not holding such honorary commissions are subject as non-commissioned officers, except:—

(1) They cannot be punished by their Commanding Officer, or tried by a Regimental Court-Martial.

(2) When tried by a District Court-Martial, the Court can only inflict certain specified punishments (see p. 88).

(3) If reduced to the ranks they are not required to serve, and may claim their discharge.

ss. 182, 190 (4).

Non-Commissioned Officers (which term includes acting Non-Commissioned Officers) are subject as soldiers, except:—

(1) A Commanding Officer is not obliged to deal summarily with an offence of drunkenness committed by a Non-Commissioned Officer.

(2) The Army Council, and in India, the Commander-in-Chief or such Officer as he may appoint, and on active service the Officer Commanding-in-Chief or any General he or the Army Council may appoint, can reduce a Non-Commissioned Officer to a lower grade, or to the ranks. The date from which the reduction is to take effect must not be prior to the date of the order.

(3) A Non-Commissioned Officer sentenced by Court-Martial to penal servitude, field punishment, imprisonment, or detention, shall be deemed to be reduced to the ranks.

(4) An acting Non-Commissioned Officer may be ordered by his Commanding Officer, either for an offence or otherwise, to revert to his permanent grade.

(5) By the King's Regulations, Non-Commissioned Officers above the rank of Corporal are not to be tried by Regimental Court-Martial, unless the Officer having power to convene a District Court-Martial, considers it impracticable to convene a District Court-Martial.

*Warrant Officers Class II. holding substantive rank as such are Warrant Officers and not Non-Commissioned Officers for all purposes of the Act.

(6) A Non-Commissioned Officer cannot be punished summarily by his Commanding Officer.

ss. 183, 190 (5) ; A. (Amend.) Act, s. 3 ; K.R., 305, 438, 499.

When Officers or Petty Officers of the Navy are acting with or attached to any body of Military Forces under such conditions as may be prescribed by the Admiralty and Army Council they have the same powers of command and discipline (except power of punishment) as if they were Military Officers or Non-Commissioned Officers.

A. (Amend.) Act, s. 4.

As regards the Marines, the power of the Admiralty to make Articles of War for their governance is specially reserved, and the Admiralty have the powers given by the Act to various military authorities in connexion with soldiers of the Land Forces. A General Court-Martial for the trial of a Marine can only be convened by an Officer having a warrant from the Admiralty, except in special cases beyond the seas. Marines, when borne on the books of any King's ship, are subject to the Naval Discipline Act, unless landed for an expedition, when the Senior Naval Officer may order that, while so employed, they are to be subject to military law. **s. 179.**

By a recent Act the Admiralty may order that Officers and men of the Navy, though borne on the books of a King's ship, are, while serving on shore, to be subject to the Army Act in like manner as Marines. This Act is only to be in force during the war and for six months after.

N.F. Act, ss. 1, 2.

When a soldier of the Territorial Force or the Volunteers is subject to Military Law a Court-Martial may sentence him to dismissal in addition to or instead of any of the punishments mentioned on p. 17 *et seq.* **s. 181 (6).**

Colonial Forces raised by any Colony on the responsibility of the Colonial Government are subject to the law of that Colony ; but, if serving with the Regular Forces elsewhere than in the United Kingdom, then, so far as the Colonial law may be deficient for their discipline, they become subject to the Army Act. When doing duty with the Forces in the United Kingdom they are always subject. **s. 177.**

Persons who do not belong to His Majesty's forces, cannot be tried by Regimental Court-Martial or punished by their Commanding Officer; but are deemed to be under the command of the Commanding Officer of the corps to which they may be attached, provided that, if possible, such persons are not to be placed under the command of an Officer whose rank is inferior to their official rank. **s. 184.**

QUESTIONS.

1. Under what circumstances are (1) Officers of the Territorial Force and (2) soldiers of the Army Reserve subject to Military Law?
2. To what extent are the following persons subject to Military Law:—A pensioner, a soldier of the Territorial Force, a soldier who is a native of India?
3. What persons are at all times subject to Military Law? State the circumstances under which the following become subject thereto: (*a*) Army Pensioners; (*b*) Civilians.
4. Describe the circumstances under which soldiers of the Territorial Force become subject to the Army Act.
5. To what extent are the following forces subject to Military Law:—
   (1) The Army Reserve?
   (2) The Indian Forces?
   Distinguish, if necessary, between the cases of the Officers and men.
6. What persons are subject to Military Law at all times? With reference to being subject to Military Law explain the position of an Army Reservist.
7. Describe the position of newspaper correspondents and camp followers attached to a force on active service, in respect of their liability to trial and punishment under the Military Code.
8. To what extent are the following persons subject to Military Law:—
   (1) An Officer on half-pay?
   (2) An Officer on the reserve list?
   (3) An Officer of Marines?

9. What special modifications are laid down in the Army Act as applicable to the following persons in respect of their subjection to Military Law, and their trial and punishment for offences, viz. : —

   (*a*) Warrant Officers not holding honorary commissions?

   (*b*) Non-Commissioned Officers?

10. State when non-commissioned officers and men of the Territorial Force become subject to Military Law as soldiers.

11. (*a*) When do Special Reservists become subject to Military Law?

    (*b*) In what circumstances would Special Reservists form part of the Regular Forces?

CHAPTER IV.

CRIMES AND PUNISHMENTS.

As already stated, all persons subject to military law are so subject either as Officers or soldiers. In the sections of the Act dealing with the different military offences the punishment to which either of these classes is liable on conviction of each offence is stated. In every case, except two, the law has laid down the maximum punishment which may be awarded to either an Officer or soldier, and allows the Court to award that maximum or any less punishment they may think fit; *i.e.*, one lower in the scales to be presently mentioned.

The two exceptions are :—

(1) An Officer convicted of "Scandalous conduct" must be cashiered. **s. 16.**

(2) An accused convicted of "Murder" is liable to suffer death; no alternative punishment is mentioned. **s. 41 (2).**

Scale of Punishments.

Two scales of punishments are laid down, one applicable to Officers, the other to soldiers. **s. 44.**

The punishments to which Officers are liable are :—

1. Death; by being shot or by being hanged. The former would be given in the case of purely military offences; the latter in the case of disgraceful offences, like murder.
2. Penal servitude for not less than three years, up to life. It will be noticed that, unlike the ordinary criminal law, various limits of penal servitude are not fixed for the different military offences, but whenever it can be given at all it can legally be given for life. For offences under s. 41 (5) it can only be given up to the limit fixed by the ordinary law. (For these limits *vide* the table at the end of Man., Ch. VII.). It commences to count from the date on which the original Proceedings of the Court are signed by the President.

s. 68 (1) and *note* 3.

3. Imprisonment, with or without hard labour, for not more than two years. The sentence begins to count from the date on which the original Proceedings of the Court are signed by the President, so that if a prisoner is already under sentence the two terms of imprisonment will run concurrently. No soldier can be imprisoned for more than two consecutive years, whether under one or more sentences. Detention in custody or by the Civil Power counts; but where there is a single day's freedom, as by escape, the continuity is broken.
s. 68 (and *note*).

4. Cashiering. Note that Officers, before being sentenced to penal servitude or imprisonment, are to be cashiered.
s. 44 (2).

5. Dismissal from His Majesty's Service. This differs from cashiering, inasmuch as an Officer who has been cashiered is thereby disqualified from ever serving the Crown again in any capacity, civil or military; whereas dismissal does not entail such disqualification. **Clode, Mil. Law, p. 107.** *note.* Apart from sentence by Court-Martial, the Crown has the right at any time to dispense with the services of any Officer; on the other hand no Officer has the right to resign his commission and must continue to serve unless such resignation is accepted by the Crown. **Man., XI., 9; Clode, Vol. II., p. 96.** Under the existing Royal Warrant an Officer is not permitted to retire voluntarily unless the Army Council deem it expedient. **R.W., 5.0.** A sentence of cashiering or dismissal takes effect from the date of promulgation, and the officer remains subject to Military Law, and receives pay up to the day preceding promulgation.
R.W., 297.

6. Forfeiture of rank either in the Army or his Corps, or both. This punishment is effected by sentencing the Officer to take rank in the Army or his Corps as though his commission bore date the day after

that of the Officer below whom it is intended he shall take precedence. It must be noted that an Officer cannot be reduced to a lower rank. **R.P., 47.**

7. Reprimand, or severe reprimand, which may be administered publicly or privately, as the confirming authority may appoint. **s. 44** *note* 5.

In addition to or without other punishment an Officer may be sentenced to stoppages to make good any loss his offence may have occasioned, ~~or to forfeiture of pay for every day of absence without leave; or~~ to forfeiture of any decoration, other than an "Order," or the Victoria Cross, Military Cross, Volunteer or Territorial Officer's Decoration. **ss. 44 (12), 137. R.W., 637; A.O., 1/17.**

The punishments to which soldiers are liable are :—

1. Death.
2. Penal servitude for not less than three years.
3. Imprisonment, with or without hard labour, for not more than two years. This punishment should not, as a rule, be given for a purely military offence, if it is intended that the man should rejoin the colours. **K.R., 583** (iv).
4. Detention for not more than two years. This punishment was introduced by the Army (Annual) Act of 1906, to avoid the stigma attaching to imprisonment for soldiers convicted of offences against military discipline and who are not sentenced to discharge with ignominy. It is carried out either in military custody or detention barracks. **s. 63 (1).**
5. Field punishment which can only be awarded on active service. The rules for carrying out this punishment are made by the Secretary of State and laid before Parliament. **s. 44 (5), (9).**

   Those at present in force are as follows:—

   Field punishment is to consist of Field Punishment No. 1; or Field Punishment No. 2, for any period not exceeding three months. If sentenced to the first kind, the soldier may be

kept in fetters or handcuffs, and secured to prevent escape; he may be tied up in a fixed position for not more than two hours in one day, or three days out of four, or twenty-one days in all; care must be taken to leave no permanent mark or injury; (when the offender's unit is actually on the move he will be exempt from the foregoing). He may be subjected to hard labour as under an ordinary sentence of imprisonment with hard labour. If sentenced to the second kind, the same rules apply, except that the soldier cannot be tied up in a fixed position. All offenders march with their unit, carrying their arms and accoutrements, perform all their duties and extra fatigues, and are treated as defaulters. **Man., pp. 721, 722.**

Note that this punishment can now be given for any offence on active service, and that the proviso prohibiting its being given to a non-commissioned officer has been repealed.

s. 44 (5).

6. Discharge with ignominy from His Majesty's Service. This punishment may be added to a sentence of penal servitude or imprisonment, but not to a sentence of detention; and the King's Regulations state that it should be added in the case of persistent offenders, or for offences of a disgraceful nature, and when a sentence of imprisonment is given. **s. 44 (4); K.R. 583** (xiii).

7. Reduction in the case of Non-Commissioned Officers to a lower grade, or to the ranks. This punishment may be in addition to or without any other punishment. A reference to King's Regulations, para. 282, will show what positions in the Service are *ranks* and what are *appointments*. A sentence of reduction to or from an acting rank is inoperative, and is in law no sentence at all, *e.g.*, from Lance-Corporal to Private, because the *rank* of a Lance-Corporal is Private. A Non-Commissioned

Officer sentenced to penal servitude, field punishment, imprisonment or detention, is deemed to be reduced, even if not expressly sentenced to reduction, but it is customary to reduce the prisoner before sentencing him to any of these punishments. A Lance-Corporal forfeits his acting rank on being sentenced to any one of the above punishments. A Non-Commissioned Officer reduced to a lower rank will take precedence in that rank from the date of signing the original sentence of the Court. If a sentence of reduction is remitted he will, if no service is forfeited, retain his original seniority in his rank. **s. 183 (3), (4), (and *note* 4) ; K.R 305.**

8. Forfeiture of seniority of rank in the case of Non-Commissioned Officers in the same manner as described in the case of Officers, *ante*. This forfeiture will affect only his seniority in the rank and not his period of service in it. This punishment may be in addition to or without any other punishment. **s. 44, *note* 12 ; 183 (3).**

9. Forfeitures. These include forfeitures of deferred pay, service towards pension, or any military decoration (other than the Victoria Cross or Military Cross) or reward, including good conduct badges and pay, any annuity for good conduct, and pension. * **ss. 44 (11), 190 (18), (19) ; R.W., 1238 ; A.O., $\frac{13}{17}$.** A soldier convicted of desertion or fraudulent enlistment, or an offence under s. 17 or 18, or sentenced to penal servitude, or discharged with ignominy, forfeits all decorations (other than the Victoria Cross or Military Cross) without any award of the Court. **R.W., 765, 1095, 1114, 1137, 1236 ; A.O., $\frac{13}{17}$; Man., p. 697,** *note*. If a man is in possession of the Victoria Cross the case is reported for His Majesty's pleasure to be ascertained as to its forfeiture. **K.R., 1746.**

10. Fines. These can only be given for drunkenness, and must not exceed one pound. **£10 ss. 19, 44,** *note* 18.

* Qu Remitted.

11. Stoppages. These can be given to make good any loss or damage occasioned by the accused's offence, and must not exceed the amount necessary to do this. In the case of damage to mechanical vehicles the amount of the stoppage is usually to be limited to the equivalent of fourteen days' pay; or where Government property is damaged by fire, through neglect, the equivalent of one week's pay. Where the damage has been caused by two or more soldiers, each can be legally sentenced to make good the whole amount, so that in the event of it being impossible to recover his share from one, the other is liable for the whole, but if both remain amenable the stoppage would be equally divided between them. The total stoppages recovered, however, must leave the soldier at least one penny a day, after paying for his messing and washing. In cases where a Court-Martial has not exercised its power of sentencing an offender to stoppages, the amount necessary to make compensation can be deducted from his pay by order of the Army Council under the Royal Warrant.

ss. 136, 138 (3), (4), provisos (*a*) and (*b*), (and *notes* 18 *and* 19); **K.R., 496 A**; **1029.**

12. On active service a Court-Martial may, in addition to or without any other punishment, order the offender to forfeit all ordinary pay for any period commencing on the day of the sentence and not exceeding three months. **(s. 44 6).** When the soldier is already liable to any other penal deductions from his pay, the sentence only applies to the balance after these other deductions have been made. **s. 138, proviso** (*c*).

Forfeiture of pay for absence without leave or desertion might be given by a Court-Martial, but the sentence would have no effect, as, under the Royal Warrant, ~~now in force~~, a soldier forfeits his pay for every day of such absence. A "day" is reckoned to be absence for six consecutive hours,

either wholly in one day, or partly in one day and partly in another, or where, by reason of his absence, the soldier has missed a duty, which has thereby been thrown on another person.

ss. 41 (12); 138 (1); 140 (2); R.W. 977, 978.

Illustrations.

Private A.	Absent from Tattoo 3rd May till 3 a.m. 4th May.	Forfeits no pay.
Private B.	Absent from guard at 9 a.m. till found in his room at 9.30 a.m. (another man having been taken for guard in his place).	Forfeits 1 day's pay.
Private C.	Absent from Tattoo 3rd May till 4 a.m. 4th May.	Forfeits 1 day's pay.
Private D.	Absent from Tattoo 3rd May till 2 p.m. 4th May.	Forfeits ½ days' pay.
Private E.	Absent from guard at 9 a.m. till 4 p.m. same date (another man having been taken for guard in his place).	Forfeits 1 day's pay.
Private F.	Absent from parade at 11 a.m. till 3 p.m. same date.	Forfeits no pay.
Private G.	Absent from picquet at 7 p.m. 3rd May, till 3 a.m. 4th May (another man having been taken for picquet in his place).	Forfeits 1 days' pay.
Private H.	Absent from Tattoo 3rd May, till 12.30 a.m. 5th May.	Forfeits 2 days' pay.

A soldier also forfeits his pay for every day—

(*a*) Of imprisonment;

(*b*) Of detention;

(*c*) Of field punishment;

(*d*) Of confinement—

(i) On a charge of which he is afterwards convicted by a Court Martial, or Civil Court; unless no entry of the civil conviction is made in the Regimental Conduct Sheet.

(ii) On a charge of absence without leave for which he is awarded detention or field punishment by his Commanding Officer.

A "day of confinement" is reckoned in the same way as a day of absence, as explained in the last paragraph.

(*e*) In hospital through sickness which the Medical Officer certifies was caused by an offence against the Army Act, of which he has been convicted.

This does not include sickness caused by immorality or intemperance, where there has been no conviction.

(*f*) Of absence as a prisoner of war, if it is proved to a Court of Inquiry that he was taken prisoner through his own neglect.

s. 138 (1), (2) and *notes*; **R.W.** 977, 978, 985.

Illustrations.

Private A.	Confined at 11 a.m 3rd May, for being drunk on parade; and at 10 a.m. on the 4th May, awarded 168 hours' detention and fined 5s.	Forfeits 7 days' pay.
Private B.	Absent from Tattoo 3rd May till 3 a.m. 4th May, when he returns and is confined till 10 a.m. same day, when he is awarded 7 days C.B.	Forfeits no pay.
Private C.	Absent from Tattoo 3rd May till 4 a.m. 4th May, when he returns and is confined till 10 a.m. same day, when he is awarded 96 hours' detention, and goes to detention barracks that day at 2 p.m	Forfeits 6 days' pay.

In arranging the sections dealing with the different military offences, the principle adopted has been to group together offences of a like nature, and then to arrange the various groups in order according to their relative gravity.

Man., III., 2.

Taking these groups in their order:—

OFFENCES IN RESPECT OF MILITARY SERVICE.

s. 4.—The offences mentioned in this section can only be committed on active service, and the offender is liable to death.

Shamefully abandoning a Garrison or Post.—This offence can only be committed by the person in command. The word "post" includes any position, whether fortified or not, which a detachment has been ordered to hold. It must be proved that the abandonment was *shameful*.

The King's Regulations direct that anyone who displays a white flag in the presence of the enemy in token of surrender is to be tried by a General Court-Martial. If the evidence is not sufficient to justify a charge under ss. 4 or 5, he will be charged under s. 40. **K.R., 555.**

s. 5.—These offences can only be committed on active service, but, not being deemed so serious as those in s. 4, the maximum penalty is penal servitude.

s. 6.—These offences, except 1 (*a*) and (*g*), can be committed either on active service or in peace time. If on active service, the offender is liable to death for all except two in sub-section (2), for which the maximum penalty is penal servitude; if not on active service, the penalty is cashiering for an Officer, and imprisonment for a soldier.

Without orders, leaving his Guard or Post.—Here the word "post" means the place where it is the duty of any Officer or soldier to be, as a sentry's beat. A Non Commissioned Officer on gate or canteen duty leaving his post would be charged under this section.

Forcing a Safeguard.—A safeguard is a party of soldiers detached for the protection of some particular person, or a house or other property. A sentry furnished by this party is part of the safeguard, and to force him constitutes the offence. Some authorities say the term "safeguard" includes a written document, given to the person to be protected, or posted on the property itself.

Man. XIV, 335-337; Hall, sec. 195.

Forcing or Striking a Sentry.—Actual force is not necessary to constitute this offence. If a soldier, for instance, on being warned by a sentry not to pass his post, rushed past him without touching him, he would be guilty of having "forced the sentry."

When acting as sentinel, being drunk or asleep on his post, or leaving it before he is regularly relieved.—Even though he has not been regularly posted, a soldier is liable for an offence committed on his post if, being one of the guard or party furnishing the sentry, he has undertaken the duties; but if he leaves his post and commits an offence it is necessary to prove he was regularly posted. A soldier commits the offence of leaving his post who leaves it even for a meritorious purpose, as, for example, to put out a fire; but in practice he would never be tried for it. This section does not apply to "stablemen," that is, soldiers employed in the care of horses and stables, and who are not regularly posted and relieved. **O'Dowd, p. 34; K.R. 560.**

Mutiny and Insubordination.

s. 7.—*Mutiny* is collective insubordination, or the combination of two or more persons to resist lawful military authority. The essence of the offence is the combination to resist authority, hence one man, no matter how insubordinate, cannot mutiny.

Insubordination is individual resistance to military authority; any act, language, or disobedience in defiance of authority is insubordination.

Sedition is the same offence as that known in the ordinary criminal law, and consists of any conduct calculated to bring into contempt, or exciting disaffection against, the Sovereign, or the Government, or either House of Parliament, or the administration of justice. **Man., III., 4—6.**

Everyone causing, or joining in, a mutiny or sedition, or being present and not using his utmost endeavours to suppress it, or coming to the knowledge of any actual or intended mutiny or sedition and not informing his superior Officer without delay is liable to death.

s. 8.—*Striking, or using, or offering violence to a superior in the execution of his office.*—The offender is liable to death. The distinction between this sub-section and the next is the words, "in the execution of his office." It is impossible to give a definition of this term which will meet all cases, and a Court would have to determine from their military knowledge whether, in any particular instance, the superior was in the execution of his office. The fact of an Officer being in plain clothes would not prevent his being in the execution of his office, if, for instance, he were ordering disorderly soldiers back to barracks; but it would be necessary to prove that there were reasonable grounds for the soldier knowing the person assaulted was an Officer. A Non-Commissioned Officer asleep in the barrack-room of which he had charge, would probably be held to be within this sub-section. An Officer or Non-Commissioned Officer in barracks or quarters is in the execution of his office.

"Superior Officer." It will, of course, be for the Court to recognize from their knowledge of military ranks whether the person assaulted is the superior of the accused, and this fact would not have to be proved, unless the person struck and the accused are of the same grade, when it will have to be proved that the latter knew that the other was senior to him in the rank. **O'Dowd, p. 15.**

Note that when troops become prisoners of war the ordinary military relations between superiors and subordinates and the duty of obedience remain unaltered, and any prisoner guilty of a breach of discipline will be liable to be dealt with for such, after release. **K.R. 222.**

In charges against soldiers of the Special Reserve or Territorial Force under this or the next section, it will be necessary to show that the "superior officer," as well as the accused, was subject to military law at the time.

The Matrons, Sisters and Staff Nurses are not the "superior officers" of soldiers within the meaning of this or the next section, but it is laid down in the Regulations that as regards duties in connexion with the sick in hospitals they have authority next after the Medical Officers, and their orders are to be obeyed accordingly, and they are to receive the respect due to this position. Any breach of this regulation would be an offence under s. 40.

A.M.R., 324.

"An offer of violence" is any defiant act or gesture which would, if completed, result in violence, *e.g.*, throwing anything at the superior or pointing a loaded firearm at him; but the term does not include any gesture, no matter how impertinent, which could not by any possibility produce violence, *e.g.*, shaking his fist from an upper window at a superior on the barrack square, or pointing an unloaded weapon at him.

Violence, or attempted violence, when in self-defence and necessary for actual protection from injury, is justifiable. Any provocation, though not exonerating from guilt, would tend to mitigate punishment. **O'Dowd, p. 41**

Charges under sub-sec. (1) should usually be reserved for trial by a General Court-Martial.

Sub-sec. (2) includes the foregoing offences against a superior not "in the execution of his office," and also *insubordinate language to a superior.*

The actual words or their substance must be proved. It has been held that insubordinate language regarding one superior if used *to* another (*i.e.*, with the intent that it should be heard by the latter) comes under this section. But expressions used (1) in the course of a judicial inquiry, (2) by a party to the case, (3) and pertinent to and *bona-fide* for the purposes of the inquiry, cannot be made the subject of a criminal charge, no matter how offensive to a superior. Coarse or abusive expressions used by a drunken man should not, as a rule, be charged under this section ; and care should always be taken to discriminate between mere angry expressions used in a moment of irritation by a man of inferior education, and words indicating a deliberate insubordinate intent. Improper language, not amounting to insubordination, should be charged under s. 40.

Man., III., 30; V., 86.

A man using violence to a superior accompanied by insubordinate language should only be charged with "using violence." The language used should be brought out in evidence to prove his intention of being insubordinate.

R.P., 11 (a), *note* 2.

For offences under this sub-section an offender is liable to penal servitude, on active service ; at other times, to cashiering or imprisonment.

s. 9.—*Disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by a superior in the execution of his office.* The offender is liable to death. It must be proved

(1) That the command was lawful.
(2) That it was given personally by a superior.
(3) In the execution of his office, and
(4) That it was disobeyed defiantly.

A "lawful command" means not only a command which is not contrary to the ordinary Civil Law, but one which is also justified by Military Law. **Man., III., 10.**

Thus, for example, an Officer tells his soldier servant to bring round his horse from the stable. If the horse were his charger, and he required it for military duty, this would be a "lawful command"; but if the Officer were in plain clothes and wanted the horse for hunting, this would not be a "lawful command" within the meaning of the section. **O'Dowd, p. 49.**

Religious scruples furnish no excuse for disobedience. The disobedience must refer to some command to be carried out at once. A man who, when ordered to perform some future duty, refuses, does not disobey, and if placed in arrest, must be charged under s. 8. Physical impossibility to comply with the order, of course, furnishes an excuse for not obeying it. An omission to obey arising from misapprehension or forgetfulness is not an offence under this section.

Charges under sub-sec. (1) should generally be reserved for trial by a General Court-Martial.

Sub-sec. (2) deals with disobedience of a command not necessarily given personally by the superior, and the manner of disobeying need not show wilful defiance. It will be sufficient if the command is given by an agent of the superior, but it must be a specific order to an individual. In other respects, the notes to the foregoing sub-section apply also to this one. The offender is liable to penal servitude on active service; otherwise, cashiering or imprisonment.

Disobedience of Standing Orders should be charged under s. 11.

s. 10.—*When engaged in a quarrel, etc., refusing to obey, or striking an Officer (although junior), who orders him into arrest.* A junior Officer has authority to order into arrest any Officer, even of higher rank, who is engaged in any quarrel, fray, or disorder. **s. 45 (3).**

If the Officer ordering the arrest were the superior, then to strike him or disobey him would be an offence under s. 8 or 9. Only Officers should be charged under this sub-section.

Striking or offering violence to anyone, whether subject to military law or not, in whose custody he is placed. Striking a civilian policeman who had the offender in custody would come under this sub-section, provided the latter has been placed in custody by military authority.

Resisting an Escort. The resistance may be merely passive, as by lying down and refusing to move. Running away from an escort to prevent capture would also be within the sub-section. Breaking away from an escort is not in itself an offence under this sub-section, though it could be tried under s. 22. The particulars of the charge should specify the nature of the resistance.

Breaking out of barracks is the offence of quitting barracks when a man has no right to do so, either because he is a defaulter, or on duty, or by the custom of the Service should not leave barracks (*e.g.*, between tattoo and réveillé). It is immaterial whether the offence was committed by violence or stratagem, or simply walking out of the gate unnoticed. "Breaking out of quarters" relates to the case of a man leaving one part of a barrack for another, where he had no right to be at the time. **O'Dowd, p. 53.**

The fact that a man was a defaulter must be proved by a certified copy of the Guard Report or Minor Offence Report. **K.R.. 581 (A).**

Only soldiers can be charged under this sub-section.

The penalty for any of the offences in this section is cashiering in the case of an Officer or imprisonment in the case of a soldier.

s. 11.—*Neglecting to obey general or other orders.* "General orders" do not include Army Orders or the King's Regulations; but if any parts of such orders or regulations are re-published in garrison or regimental orders they become part of these latter orders, and disobedience will render the offender liable. Ignorance of a published order is no excuse, if it was the duty of the offender to know it. The publication of the order must be proved. A copy of the order must be produced by a witness on oath. Failure

to comply with a verbal order is not an offence under this section, but should be charged under s. 9. This section does not include non-compliance, through forgetfulness, with an order to do something at a future date; this would be charged under s. 40. Penalty, cashiering or imprisonment.

Desertion, Fraudulent Enlistment, and Absence without Leave.

s. 12.—*Desertion* is absence without leave with the intention of permanently quitting the Service, or of evading a particular important duty, such as embarkation with a draft, or going out in aid of the Civil Power.

Man., III., 13, 16.

The period the accused has been away, or the distance he has gone, or whether he is dressed in plain clothes or not, or whether he surrendered or was apprehended, are none of them facts which of themselves constitute the offence, though they would be taken into consideration by the Court in determining whether he were guilty of the offence of desertion or of absence without leave. The fact that he had committed a serious crime just previous to absenting himself would point to the probable intention of his remaining away to escape the consequences of that crime.

Man., III., 14–19.

Attempting to desert is any act which is a prelude to desertion, although no actual absence can be proved, as if a soldier were caught in the act of slipping past a sentry or climbing over a barrack wall. **Man., III., 18.**

Whenever a soldier has been absent twenty-one days, a Court of Inquiry is to be assembled as soon as possible to enquire into and record the fact of his illegal absence and deficiency of kit, if any. The Court must not be assembled till after twenty-one clear days, exclusive of the day the absence began and the date of assembly. It is illegal if held after the absentee has returned. This Court consists of three Officers, who are not themselves sworn, but take evidence on oath. The declaration of the Court should state the place and date of absence and of deficiency of kit (if any),

and that the man is still so absent and the articles deficient. Before declaring any deficiency the Court will take evidence that the man had the articles within a reasonable period of the deficiency. After this declaration that the man has been absent twenty-one days is confirmed by the Commanding Officer, it is recorded in A.B. 161, and put away with the regimental records, and is equivalent to a conviction of desertion if the man does not return, and he is accordingly struck off the strength as a deserter. If he rejoins he is tried for desertion, this record being used as evidence against him at the trial ; unless he can prove any facts showing that he intended all the time to return, in which case his offence would only be absence without leave.

s. 72 and *notes* ; **R.P. 125** and *notes* : **K.R., 673, 1912 ; A.O.,** $^{2}_{17}$.

The maximum penalty for any offence under this section is death, if committed on active service or under orders for active service ; otherwise, imprisonment for the first offence and penal servitude for the second or any subsequent offence. For the purposes of liability to the higher punishment, a previous conviction of fraudulent enlistment is considered as equivalent to a previous conviction of desertion. A man convicted of desertion, or whose trial for this offence has been dispensed with by the competent military authority under s. 73, forfeits all his prior service towards limited engagement, and has to start his service afresh, like a recruit, from the date of conviction or of the order dispensing with trial.* All variations of service such as extension of service are thereby cancelled. In the case of a man who has re-engaged, only the service on re-engagement, *i.e.*, after completion of 12 years, is forfeited.

s. 79 (2) ; K.R., 273 ; A.O., ^{18}.

This forfeited service may be restored by the Army Council to any soldier who is recommended for such restoration by Court-Martial, or who may perform good and faithful service, or after he has served three years in an "exemplary manner," *i.e.*, without an entry in the Regimental Conduct Book, or on his promotion to Serjeant. In the last two cases the service is, if the man so elects, restored automatically by the Regulations now in force.

s. 79. ; K.R., 273.

* This does not apply to a man of the Territorial Force. s. 178.

s. 13.—*Fraudulent Enlistment* is the offence committed by a soldier of the Regular Forces, or a Militiaman, or soldier of the Territorial Force when embodied, or a Yeoman called out on actual military service, who, without fulfilling the conditions enabling him to do so, enlists or enrols in His Majesty's Regular Forces, or in any force raised in India or a colony; or a soldier of the Regular Forces who enlists in the Territorial Force, or any reserve forces, or enters the Royal Navy.

It will thus be seen that for a soldier to be guilty of fraudulent enlistment he must really be a deserter from another Regiment, as unless he is a soldier of the Regular Forces (or a soldier of the Auxiliary Forces embodied) when he commits the offence, the unlawful enlistment is not within this section, but would come under s. 32 or 33. In trying a man, he is usually deemed to belong to the Corps in which he has last enlisted and is held to serve on his last attestation. He is not, as a rule, also charged with the desertion from his former Regiment.

K.R., 525.

It will be noted that the offence of an embodied Territorial enlisting into another unit of the Territorial Force or into the Navy is not included; this offence, therefore, must be charged under s. 33.

It has been held that men called up under the Military Service Acts and signing a false Record of Service paper do not fraudulently enlist under this section.

A certified true copy of the attestation paper is evidence of the man having enlisted as shown therein.

s. 163 (1) (*a*).

For the first offence the offender is liable to imprisonment, and for the second or any subsequent offence to penal servitude. For the purposes of liability to the higher punishment, a previous conviction of desertion (except the desertion immediately preceding the fraudulent enlistment), is considered as equivalent to a previous conviction of fraudulent enlistment. The rules as to forfeiting service towards limited engagement, and its restoration are the same as those stated above in the case of desertion.

s. 79 (2); K.R. 273.

s. 14.—*Assisting a person to desert, or knowing of any intended desertion, not forthwith telling his superior officer or taking some steps to prevent it.* Maximum penalty, imprisonment. A civilian who assists a deserter is liable to six months' imprisonment on summary conviction. **s. 153.**

s. 15.—*Absence without leave* is reckoned to begin from the first roll call, or parade, or other duty, at which the absentee did not appear, and ends as soon as he returns or is apprehended. Involuntary absence, as, for example, detention by the Civil Power, does not count as absence without leave. If the absence is proved, the onus will lie on the accused of showing that he had leave. When the absence is from some particular parade or duty, then it falls under sub-sec. (2), otherwise the offence will come under the first sub-section. It must be proved that the place and time of the parade were appointed by the Commanding Officer, and that the accused had warning of them. A man absent without leave is not also liable to be tried for failing to appear at all the parades, etc., during his absence. If a man is found so drunk as to be incapable of attending parade he should be charged under s. 19 instead of under this section. **Man. III., 31.**

Being found in a prohibited place or going beyond bounds. Ignorance of the order putting the place out of bounds, or fixing the bounds, is no excuse; but if the order is not clearly worded, then a mistake arising therefrom would excuse the soldier.

Absence from school. This offence and those mentioned in the last sub-section can only be committed by soldiers.

The maximum penalty for offences against this section is cashiering for an Officer or imprisonment for a soldier. As already noted, when dealing with punishments, the pay of an Officer may be forfeited for every day of absence without leave, s. 137 (1); and, in the case of soldiers, pay is forfeited for every such day of absence.

s. 138 (1); R.W. 977 (*a*).

Disgraceful Conduct.

s. 16.—*Scandalous conduct, unbecoming the character of an Officer and a gentleman.* Only an Officer can be tried under this section, and, if convicted, he *must* be cashiered, the Court having no discretion in the matter of punishment. The sentence cannot be commuted by the Confirming Officer. s. 57 (i) (*note 4*). In order to sustain a charge under this section, it must be shown that the conduct was not only prejudicial to good order and military discipline, but reflects such discredit upon the Service that the offender is unfit to remain connected with it. **O'Dowd, p. 66.**

Misconduct not coming within this section might be tried under s. 40.

s. 17.—*When charged with the care of money or goods stealing or embezzling them or conniving at such theft or embezzlement.* Maximum penalty, penal servitude. This section differs from s. 18 (4) in that the offender is the person actually charged with the care or distribution of the property made away with, so that he is guilty of a breach of trust, and thus renders himself liable to the heavier punishment of penal servitude. The expression "charged with the care of" does not include a sentry posted over a building containing public property, but means the person must have been officially so charged as part of the duty of his office or employment. Hence a Corporal or Private entrusted with money by a Pay-Serjeant, for his own convenience, would not come within this section. The particulars of the charge should show how it was the duty of the accused to have charge of the property.

s. 18.—*Malingering or feigning disease.* Malingering means a more serious case of feigning disease, implying some active deceit, such as taking a drug or doing something which would produce the appearance of the disease.

Misconduct or disobedience producing disease or delaying its cure. The misconduct must be with the intent of producing or aggravating the disease, and does not include the involuntary production of disease by immoral conduct or intemperate habits, or refusal to undergo an operation.

Wilfully maiming himself or another soldier with intent to render himself or the other soldier unfit for service. "Maiming" in law means doing anything to a man whereby his fighting capacity is lessened. **Harris, p. 205.**

Stealing (or theft) is the wilfully, wrongful taking possession of the money or goods of another with intent to deprive the owner of his property in them.

Man., VII., 53; Harris, p. 190.

Embezzlement is the unlawful appropriation to his own use, by a servant or a clerk, of money or chattels received by him, for and on account of his master or employer.

Man., VII., 59; Harris, p. 226.

The legal distinction between these two offences is highly technical, and for all practical purposes might be abolished. It largely depends on the difference in law between the two terms, *custody* and *possession*. Thus, if a master gives his plate to his butler to take care of, the latter has the *custody* of the plate, but the *possession* of it is in the master, and if the butler makes away with it he *steals* it. If, however, the master sends his butler to the silversmith's to fetch plate which he has bought, and the silversmith delivers the plate to the butler for his master, the plate is now in the *possession* of the butler, and has not yet come into the master's *possession* until the servant either hands it over to him or puts it with the other plate in the pantry, so that, if on the way home he makes away with it, he *embezzles* it. **Stephen, Crim., Art. 423, 430.**

One other example may, perhaps, help to make the difference clear. A clerk receives £20 from a person for goods sold for his master; he at once pockets it, appropriating it to his own use; this is *embezzlement*—the money has never got into the master's *possession*. On the other hand, if the clerk puts the £20 in the till, and then after the customer has gone, takes it for his own use, this is *stealing*—when the money was put in the till it came into the constructive *possession* of the master. **Harris, p. 225.**

It must be observed that to bring the offence within this section the money or goods made away with must

as meaning connected with a Corps or battalion or other subdivision of a Corps.

belong to an Officer or comrade, or some regimental institution, or be "public" property. If they are not either "public" or "military" property as above, the offence does not come under this section, but falls under s. 41 (5), which deals with offences against the ordinary criminal law. The property of a garrison mess, or institution, or of a branch of the Royal Army Temperance Association, is not included in the term "regimental" property. The offence of theft from a comrade should be tried by Court-Martial, and not by Civil Court, unless there are peculiarly complicated circumstances connected with the case. K.R., 556.

The values of the articles stolen or received in respect of which it is desired the accused should be put under stoppages must be stated in the particulars of the charge, R.P. (11) (F). The ownership should be stated and proved, when the offence is charged under this section; it is not necessary to state the ownership when the offence is charged under s. 41, except under special circumstances. 5 & 6 Geo. V., c. 90, First Sch. ~~2 & 6~~ (1). The goods must, if possible, be produced in Court and identified, or the reason for their non-production explained.

Sub-sec. (5) deals with all other offences of a fraudulent nature, not being stealing or embezzling, and with any disgraceful conduct.

Offences of indecent conduct towards children and young females should be charged under s. 41, and not under this sub-section.

At home, the charge-sheet and summary of evidence in all cases of fraud are to be submitted before trial to the Judge Advocate-General. Simple cases of theft are not included. K.R., 561 (1).

A charge of disgraceful conduct must show that the conduct was palpably "disgraceful." Only soldiers can be tried under this section. Maximum penalty, imprisonment.

Drunkenness.

s. 19.—*Drunkenness, whether on or off duty*, renders an Officer liable to be cashiered; and a soldier to imprisonment, and, either in addition to, or in substitution for, any other punishment, a fine not exceeding one pound. The case of a sentry drunk on his post has already been considered under s. 6.

It should be noted that the distinction between drunkenness on duty or not on duty has been done away with, and the charge is now in any case, *drunkenness*. If the offence was committed on duty, or when warned for duty, the fact that the offence was so committed and the nature of the duty should be stated in the statement of particulars of the charge. The terms "aggravated" and "simple" drunkenness have been abolished.

Drunkenness includes intoxication from the effects of opium or any similar drug, as well as from liquor.

Man., III., 25.

Offences in relation to Persons in Custody.

s. 20.—*Releasing a person in custody without due authority, or allowing him to escape.* If the offender acted *wilfully*, the maximum penalty is penal servitude; if *negligently*, imprisonment. It will be for the accused to show that he acted under due authority. If an escort of a Non-Commissioned Officer and a private lose the soldier in their custody, the blame will primarily rest on the Non-Commissioned Officer unless it can be proved that the private shared in allowing the escape to take place, or unless the Non-Commissioned Officer shows that he had good grounds for temporarily leaving the soldier in the care of the private. A man who, having completed his term of imprisonment or detention, is being conducted back to his Corps, is no longer a soldier in arrest.

s. 21.—This section deals with various breaches of the law laid down for preventing a person in custody being unduly kept in confinement without having his case disposed of. The maximum punishment is cashiering or imprisonment.

Any one committing a soldier into custody must give in, either at the time or within twenty-four hours, a written account, termed "the charge" to the person in whose custody he is placed. **s. 45 (4)** and *note*.

The Commander of the Guard must enter the names of all soldiers in arrest in his Guard Report, which he must send in as soon as his guard is relieved, or in any case within twenty-four hours of the soldier being confined. **K.R. 463.**

A Commanding Officer must investigate all charges within forty-eight hours of their being notified to him, or must report not doing so, with his reasons, to the General or other Officer to whom application for a Court-Martial would be made. **R.P. 2.**

If eight days elapse without the case being disposed of summarily or a Court-Martial being ordered, a special report must be made to the General Officer Commanding, and repeated every eight days, except on active service.

s. 45 (1); R.P. 1.

If more than fifteen days in the United Kingdom, or thirty days elsewhere, elapse between the receipt of an application for a General Court-Martial or a District Court-Martial and the disposal of the case, either by the assembly of such a Court or otherwise, the General Officer must report the circumstances to the Army Council, or, in India, to the Commander-in-Chief in India. **R.P. 17 (c).**

s. 22.—*Escaping from lawful custody, or attempting to do so.* A soldier in arrest escapes when he unlawfully goes beyond the control of the person in whose custody he is placed. The escape may be either with or without force or artifice, and with or without the connivance of the custodian. A soldier in arrest finding the door of his cell open, and walking out of the prison, is guilty of an escape; but if a soldier, undergoing imprisonment, is working outside the confines of the prison and is not under the supervision of a warder or other custodian, and goes away, this is not an offence under this section. **O'Dowd, p. 77.**

An Officer or Non-Commissioned Officer "breaking his arrest" commits an offence against this section. The maximum penalty is cashiering or imprisonment.

Offences in relation to Property.

s. 23 is concerned with corrupt dealings in respect of supplies for the troops, the penalty being imprisonment.

s. 24.—*Making away with, or losing by neglect, articles of kit, etc.* In a charge for "making away with," it must be stated whether they were sold, pawned, etc., and in the absence of proof of such selling or pawning, the charge must be for "losing by neglect." **K.R. 542.**

Unless A.F. B 115 is to be produced in evidence it must be proved that the articles deficient were actually issued to the soldier, and the onus of showing that the loss has not occurred through his neglect will then rest on him.

Man., p. 704.

"Equipments" are defined to include "every article issued to a soldier for his use, or entrusted to his care for military purposes," hence it will include such things as blankets and barrack furniture.

"Military decoration" includes any medal, clasp, good conduct badge, or decoration. s. 190 (18). It must be carefully noted that there is nothing in the section which makes it an offence to lose by neglect a military decoration.

The steps to be taken when a soldier is discovered to be deficient of his medals are laid down in K.R., para. 1759.

Wilfully injuring property. The property must be public property, or belong to an Officer or comrade, or to some regimental institution, to bring the offence within this section. Injuring the private property of civilians would come under s. 41 (5).

Ill-treating any horse used in the public service. A soldier-groom ill-treating an Officer's charger commits this offence, but if the horse were not used for military duty at all no offence would be committed against this section, though the man could be tried under s. 41 (5). **O'Dowd, p. 82.** "Horse" includes mule, or other beast of burden or draught. s. 190 (40). And as in all Acts of Parliament masculine words include the feminine, it, of course, includes "mare." **52 & 53 Vict., c. 63, s. 1.** Only soldiers can be tried under this section, and the maximum punishment is imprisonment.

Offences in relation to False Documents and Statements.

s. 25 deals with falsifying official documents and making false declarations, the punishment for which is imprisonment. A trivial error in a report should not, in the absence of fraud, be made the ground of a charge under this section. It is essential to prove an intent to defraud someone, but it is not necessary to show who the particular person was, or

whether it was the Government. "False declaration" in sub-sec. (3) relates to those made by Paymasters and others in a fiduciary position, ~~or by Officers on promotion~~, but does not include statements in a summary of evidence or verbal reports or statements. O'Dowd p 83.

s. 26 makes it an offence to sign any document in blank or to neglect to send in any reports or returns. The neglect must be culpable, something more than mere carelessness. The punishment is cashiering or imprisonment.

s. 27.—*Making a false accusation against an Officer or soldier, or a false statement affecting his character.* The accusation mentioned in sub-sec. (1) must be an accusation and not a mere statement. A statement made by an accused in his defence, even though false, is not an offence. It is not an offence under this section to make a complaint, even though it be false or frivolous, unless it affects the character of some other Officer or soldier. **O'Dowd, pp. 85, 86.**

Falsely confessing desertion or fraudulent enlistment, etc. This offence can only be committed by a soldier. The statement must be made to the Commanding Officer, *i.e.*, the Officer whose duty it would be to deal with such a charge according to the definition of Commanding Officer given in R.P., 129. A written statement made for the purpose of being laid before the Commanding Officer is a statement to him.

Making a false statement in respect of prolongation of furlough. This offence can only be committed by a soldier. When a soldier, by reason of sickness or other unforeseen casualty, finds it necessary to obtain an extension of furlough, he must go to any General or Staff Officer, or to any Commanding Officer not under the rank of captain, or if none of these is within convenient distance, to any Justice of the Peace, any of whom are empowered to extend his furlough for any period not exceeding one month, reporting to the man's Commanding Officer that this has been done. The Commanding Officer can cancel the extension, but the man cannot be punished as an absentee if he rejoins at once, or for having obtained the extension, unless he obtained it by making a *false* statement to the Officer or Justice.

s. 173; K.R. 1324.

The punishment for offences against this section is imprisonment.

Offences in relation to Courts-Martial.

s. 28 deals with the offences of a witness refusing to attend, or to give evidence, and with contempt of Court.

Military witnesses are ordered by their Commanding Officer to attend, s. 125 (1); the rules as to their being sworn, and the questions they are legally required to answer, will be considered in the Chapter on Evidence. Offences under this section are not triable by the Court in connexion with which they took place. The punishment is cashiering or imprisonment. In the case of contempt of Court, by using insulting language or interrupting the proceedings, the Court may, if they think fit, sentence the offender summarily by order, under the hand of the President, to be imprisoned, or if a soldier to undergo detention for any period not exceeding twenty-one days. (For Form Order of *vide* Manual p. 720.) This applies to an Officer, who could be thus punished by a District Court-Martial or Regimental Court-Martial for such contempt. The order does not require confirmation. The imprisonment or detention must be carried out at once, and, therefore, if the offender is the accused, the Court must adjourn until the end of the imprisonment. It would only be in extreme cases that this power would be used; it is more usual for the President to report the contempt to the proper authority, and allow the case to be dealt with by another Court if necessary; or the Court may accept an apology sufficient to vindicate their dignity.

Contempt of Court by a civilian is dealt with in s. 126 or by a counsel in s. 129.

s. 29.—*Giving false evidence when examined on oath.* This offence is similar to the offence of perjury at civil law, but it has even a wider application; for in perjury it is necessary to prove that the matter falsely sworn to was *material* to the point in issue, **Harris, p. 82**; whereas, to bring the case within this section, the false swearing need not be material, though, of course, in practice, if it is very trivial, it would hardly form the basis of a charge. It is necessary to prove—

(1) That the accused was sworn (or made a solemn declaration);

(2) That he swore as stated; this must be proved by the evidence of the Officer who recorded the evidence, or by some person who actually heard him give evidence; the mere production of the former Proceedings is not enough;

(3) That the evidence was false; one witness, unless corroborated in some material point, is not enough for this; and

(4) Some fact showing the false swearing was wilful, *i.e.*, that the accused did not believe, or was not ignorant of the falseness of, what he stated.

Even if the statement be literally true, yet, if it is calculated to create a false impression and is made for that purpose, it is within the section. **O'Dowd, p. 89** *et seq.*

The punishment for this offence is imprisonment.

Offences in relation to Billeting.

s. 30.—This section deals with various offences, such as doing violence to a person on whom billeted, or failing to pay for billets, or unlawfully demanding billets, etc. The punishment is cashiering or imprisonment. Or the offender may be dealt with by a Court of Summary Jurisdiction, and is liable to a fine not exceeding £50. **s. 111.**

Offences in relation to Impressment of Carriages.

s. 31.—This section deals with various offences, unlawfully demanding carriages, etc., or failing to pay for them, or making them travel beyond the legal distance, or carry stores not entitled to be carried, or ill-treating the owners, etc. The punishment is cashiering or imprisonment. The offender may also be dealt with by a Court of Summary Jurisdiction, and is liable to a fine not exceeding £50 and not less than 40s. **s. 118.**

OFFENCES IN RELATION TO ENLISTMENT.

s. 32.—*Enlisting after having been discharged with disgrace, or after having been dismissed with disgrace from the Navy.* This offence can, of course, only be committed by a soldier, as an Officer does not "enlist." The term "discharged with disgrace" means:—

(1) Discharged with ignominy, *i.e.*, by sentence of Court-Martial.

(2) Discharged as incorrigible and worthless.*

(3) Discharged for misconduct.

(4) Discharged on account of a conviction for felony, *i.e.*, by the Civil Power. All offences against the ordinary criminal law are either felonies or misdemeanours; the distinction is somewhat arbitrary. **Harris p. 8**; or

(5) Discharged on account of a sentence of penal servitude.

Men dismissed from the Navy for any reason except "with disgrace" cannot be charged under this section.

A certified true copy of the attestation paper is evidence of the man having enlisted as shown therein.

s. 163 (1) (*a*).

The punishment is imprisonment.

s. 33.—*False answer on attestation.* This includes any false answer, but if the offence amounts to fraudulent enlistment, or to an offence against the last section, the soldier is charged under those sections respectively instead of under this one. A false answer as to name or age would not usually form the subject of a charge. Provision is made in the King's Regulations for a soldier who has enlisted under an assumed name to have his true name added to his documents as an *alias*, **K.R., 1901**, and for a soldier who has enlisted under age to be discharged. **K.R., 390** (vi.). To prove an offence under this section one of the two original attestation papers must be produced in evidence to show the answers the man actually gave on being attested. **s. 163 (1) (*a*)** Men of the Army Reserve improperly enlisting

*This is no longer a cause of discharge under K.R. 392.

are tried under this section, and then relegated to the Reserve. **K.R.**, 522 (iii.). If it is intended that a soldier shall be retained in the Service, he is tried by Court-Martial under this section; if it is intended that he shall be discharged, he is tried under s. 99 by the Civil Power; but proceedings cannot be taken before the Civil Power if more than six months have elapsed since the commission of the offence. **K.R.**, 522 (v.); **11 & 12 Vict., c. 43, s. 11.** The punishment under this section is imprisonment.

A false answer in a Record of Service paper given by a man called up under the Military Service Acts is not an offence under this section.

s. 34 deals with general offences in connexion with enlistment, *e.g.*, a recruiter conniving at a recruit making a false answer on attestation. The punishment is imprisonment.

Miscellaneous Military Offences.

s. 35.—*Using disloyal words regarding the Sovereign.* Happily this is not an offence likely to occur, for whatever faults we may have in the Army, we cannot be accused of disloyalty. Should a case occur, the intention must be shown, for a man uttering mere violent or vulgar language while under the influence of liquor would not fall within this section. The punishment is cashiering or imprisonment.

s. 36.—*Making injurious disclosures as to the Forces.* This offence would usually, though not necessarily always, be committed on active service. It principally relates to persons under military law, who are newspaper correspondents; but injurious disclosures, even in private letters, may render an Officer or soldier liable. **K.R.**, 453. The unauthorized communication of intelligence to the enemy falls within s. 5 (4). The particulars must show that injurious effects were produced. The punishment under this section is cashiering or imprisonment.

s. 37.—*Striking a soldier, or unlawfully detaining pay.* This offence can only be committed by an Officer or a Non-Commissioned Officer. One private soldier striking another would be charged under s. 40. The word "soldier" includes a Non-Commissioned Officer. **s. 190 (6).** Hence a senior Non-Commissioned Officer striking a junior comes

within this section; if a junior strikes a senior it comes under s. 8. The "ill-treatment" must be physical ill-treatment. **O'Dowd, p. 98.** Pay can only be withheld in accordance with the provisions of a Royal Warrant or Army Council's instructions, framed in accordance with ss. 136, 137, 138, and 145.

s. 38.—*Duelling* is prohibited in accordance with the ordinary law. If a duel takes place and death ensues, the surviving principal and both seconds are guilty of murder. An Officer carrying a challenge comes within this section.

Attempting to commit suicide is prohibited in accordance with the ordinary law. The punishment for offences against this section is cashiering or imprisonment.

s. 39.—*Refusing to hand over to the Civil Power soldiers accused of civil offences.* A soldier accused of a crime against the criminal law can be arrested by the Civil Power, **s. 144**; and his Commanding Officer must hand him over to a constable having a warrant for his apprehension, but he may demand to see the warrant first. The punishment is cashiering or imprisonment.

s. 40.—*Conduct to the prejudice of good order and military discipline.* For conduct or neglect to come under this section it must be such as is clearly prejudicial to military discipline, and not merely of a social kind, though sometimes the place and circumstances in which the offence was committed will bring it within the section. "Neglect" must be culpable and not due to misapprehension or inadvertence. Attempts to commit most of the military offences, except such as are specially legislated for (*e.g.*, attempting to desert, s. 12), would fall within this section. It must be carefully noted that no crime which is an offence against any other section of the Act is to be charged under this one; but a conviction would not be invalid merely because it is in contravention of this proviso, provided no injustice is done to the accused. Punishment: cashiering or imprisonment.

Offences Punishable by Ordinary Law.

s. 41.—While saving the power of the Civil Courts to deal with any Officer or soldier who commits an offence against the ordinary law, this section makes all civil offences, when

committed by persons subject to military law, offences against the Army Act, and allows these offences (with certain exceptions) to be tried by Court-Martial. The exceptions are treason, murder, manslaughter, treason felony, and rape; these five offences can never be tried by Court Martial (except a Field General Court-Martial **s. 49 (3)**), when committed in the United Kingdom; and elsewhere in the King's Dominions, except Gibraltar, only when committed on active service, or a hundred miles away (measured in a straight line) from a competent Civil Court.

Treason; after many extensions of the meaning of this crime in the despotic times of the Tudors, the law has been settled that only those offences named in the Statute of Treasons, 25 Edward III., st. 5, c. 2, are now included, of which the chief are, imagining the Sovereign's death or that of the heir to the Throne, levying war against the Sovereign in any of his Dominions, aiding the enemies of the Sovereign, etc. Treason must be proved by some overt act; spoken words do not alone constitute the offence, but the writing of such words is an overt act. **Stephen, Crim., Arts. 52—58.** Punishment: death.

Murder is unlawful homicide with malice aforethought. **Stephen, Crim., Art. 244.** To make the killing murder, the death must follow within a year and a day after the stroke or other cause. **Harris, p. 52.** Punishment: death; no alternative mentioned.

Manslaughter is unlawful homicide without malice aforethought, but, whenever one person is killed by another, the law always presumes murder, and the burden of proving extenuation or justification lies upon the accused. **Stephen, Crim., Arts. 244, 251.**

Treason felony; certain offences which had been declared treason, were, by an Act of the late Queen's reign (11 & 12 Vict., c. 12), made felonies, and are now usually tried as treason felonies under this Statute. Such are, an intention to deprive the King of his Crown or Royal dignity; to levy war on him to force him to change his measures, or to put constraint on either House of Parliament; or to stir up foreigners to invade the Realm or the King's Dominions. **Stephen, Crim., Art. 63.**

Rape is the act of having carnal knowledge of a woman without her conscious permission. **Stephen, Crim., Art. 270.**

The punishment for either of the last three offences is penal servitude.

All other offences against the ordinary criminal law can be punished in the same way as if tried by a Civil Court, or may be punished by cashiering or imprisonment.

When any person has been acquitted or convicted by a Civil Court of any offence, he cannot be dealt with under military law in respect of the same offence.

s. 162 (6).

QUESTIONS.

1. What principle is adopted in classifying the military offences dealt with in Part I. of the Army Act? To what extent are military Courts given discretion as to the amount of punishment to be awarded for any particular offence?
2. Define the following offences:—Forcing a safeguard, desertion, breaking out of barracks.
3. Distinguish between mutiny, insubordination, and sedition. Explain the nature of the offences which would be covered by the general term of insubordination.
4. What is meant by the expression, "offers any violence?" What punishment may be awarded for the offence of "offering violence to a superior Officer"?
5. "Disobeying a lawful command." Illustrate, by an example, the difference between a lawful command and one that would not be deemed lawful. Under what circumstances may the penalty of death be awarded for the above offence?
6. The punishments that may be awarded for "striking a superior Officer" and "disobedience to a superior Officer" vary according to circumstances. Explain what these circumstances are, and state the maximum punishment in each case.

7. Under what circumstances is the offence of "disobedience" punishable by death? How is disobedience to a garrison order or a King's Regulation treated?

8. A Private is ordered by the Officer Commanding his Company to lay out his kit for inspection daily until further orders. He says at once, "It is not fair, I will not do it," and is then placed in arrest. With what offence would he be charged before a Court-Martial?

9. What is "desertion"? State the offences connected with desertion for which the Army Act punishes people subject to military law, and the maximum punishments assigned for such cases.

10. Distinguish between fraudulent enlistment and false answer on attestation: stealing and embezzlement.

11. Explain the distinction between scandalous conduct and conduct to the prejudice of good order. To what punishment is the offender liable in each case?

12. "*Strikes*, or *uses*, or *offers* violence." Show by examples the meaning of these three phases of a similar offence. How would the offence be punished if the violence was displayed towards a superior officer?

13. Enumerate five crimes which are punishable more severely if committed on active service, than if committed not on active service.

14. What is meant by the term "Discharged with disgrace"? Explain the particular object with which this term is accurately defined by the Army Act.

15. Define fraudulent enlistment, and point out the punishments that may be awarded in respect of it.

16. With reference to the section of the Army Act dealing with "conduct to the prejudice," etc., comment on the nature of the offences which should be charged under it, and point out the saving clause in connexion therewith.

17. Explain clearly the purport of Section 41 of the Army Act in respect to the trial of civil offences by Court-Martial.

18. Under what circumstances, and to what persons, can Courts-Martial award "Field Punishment"? State briefly the rules under which such sentences are regulated and carried out.

19. What is meant by the punishment styled "Forfeiture" in the scale applicable to soldiers? Explain whether such punishment can be awarded by any kind of Court-Martial for any kind of offence.

20. State briefly the regulations about "detention" as a punishment that a Court-Martial may award. In what respect has the punishment that can be awarded by a Court-Martial to a Non-Commissioned Officer been amended?

21. From what date would the Non-Commissioned Officers mentioned below take rank and precedence as corporals in the circumstances stated?

(*a*) Serjeant A. B. who was reduced to the rank of corporal by sentence of a District Court-Martial;

(*b*) Colour-Serjeant C. D. who was summarily reduced to the rank of corporal, by order of the Army Council.

22. (*a*) State briefly the distinction between desertion and fraudulent enlistment.

(*b*) In what circumstances would it be permissible to charge the offence of desertion against a soldier of the Regular Forces who had quitted his corps and enlisted in another?

23. In what circumstances would it be possible for a man of the Territorial Force to commit the offence of fraudulent enlistment?

CHAPTER V.

ARREST OF OFFENDERS AND INVESTIGATION OF CHARGES.

Arrest and Confinement.

When a person subject to military law commits an offence, he may be taken into military custody. s. 45 (1). Military Custody means, in the case of an Officer, Warrant Officer, or Non-Commissioned Officer, usually arrest, but if necessary, any of them may be placed under charge of a guard, picquet, etc., K.R., 465; in the case of a private soldier, it means either placing him in open arrest, or putting him in confinement under charge of a guard, picquet, etc. s. 45 (2); K.R., 473.

A junior Officer may order a senior into arrest if the latter be engaged in any quarrel, fray, or disorder. s. 45 (3).

Arrest is either close or open; when not specified, it means close arrest. An Officer in close arrest is not to leave his quarters, except to take such exercise, under supervision, as may be deemed necessary by the Medical Officer. When in open arrest, he may take exercise within defined limits as to time and place, or may be directed to proceed from one station to another. He is, however, forbidden to appear at any mess or public place of amusement, and must always be dressed in uniform, but without his sash, sword, belts or spurs. K.R., 466, 467.

An Officer may be placed under arrest by competent authority without previous investigation, should the nature of the offence demand it; but, ordinarily, a Commanding Officer will not place an Officer under arrest until he has inquired into the matter, and is satisfied that it will be necessary to proceed with the case. When an Officer is placed under arrest, a report is to be made at once to the General Officer under whose command he is. K.R., 469.

Except when an Officer has been placed under arrest in error, he should not be released without the sanction of the highest authority to whom the case has been reported. **K.R., 468.** No Officer can demand a Court-Martial or a Court of Inquiry or persist in considering himself under arrest after he has been released. Should he think himself aggrieved, he can seek redress through the proper channel, as prescribed in s. 42. **R.P., 8, *note*; K.R., 470.**

The rules as to the arrest of Officers apply to Warrant and Non-Commissioned Officers, who, if charged with a serious offence, will be placed under arrest at once; but if the offence is not serious, it will be investigated without previous arrest. **K.R., 471.**

When private soldiers are placed in confinement, they are usually placed in the guard detention room.

K.R., 473.

A private soldier charged with a serious offence is to be placed in arrest at once, **K.R., 475,** and the Non-Commissioned Officer who orders him to be confined is to do so without altercation, and will avoid coming into personal contact with the man, but will obtain the assistance of one or more privates to escort him to the guard detention room. (This rule does not apply to the Military Police.) Except in cases of personal violence or on detached duties, Lance-Corporals and Acting-Bombardiers of less than four years' service will not confine men without previous reference to the Orderly-Serjeant. **K.R., 477.**

The Commander of a Guard or Picquet, or the Provost-Marshal, cannot refuse to receive anyone committed to his custody, but it is the duty of the person confining the accused to deliver at the time of committal, or in any case within twenty-four hours, an account in writing, signed by himself, called "the Charge" or the "Charge report," showing the offence with which the accused is charged. **s. 45 (4).** If this "Charge report" is not received within twenty-four hours, the Commander of the Guard cannot himself release the accused, but will take steps to procure it, or will report that he has not received it to the Officer to whom he renders his Guard Report; who, if the "Charge report,"

or evidence sufficient to justify his detention, is not forthcoming within forty-eight hours, will order his release. **Man., IV., 16.** The Commander of the Guard must enter in his Guard Report the name and offence of any person who has been in his custody, together with the rank and name of the person by whom he is charged, and the original "Charge report" is forwarded to the accused's Commanding Officer. **K.R., 463.**

A man once confined can only be released by competent authority, *e.g.*, if confined in a regimental guard detention room he can only be released by the authority of the Officer Commanding the Regiment; and if in a garrison guard detention room, by the authority of the Officer Commanding the Garrison. **Man., IV., 11.**

An offender in arrest or confinement is not to be required to perform any duty beyond handing over any cash, stores, or accounts for which he may be responsible, or fatigue duties on board ship, and he is not to bear arms except by order of his Commanding Officer, in an emergency or on the line of march, or by order of the Governor, in a military prison, or of the Commandant, in a detention barrack, for purposes of instruction, exercise, or practice. If, however, he has been ordered to do any duty, he is not thereby absolved from liability for his offence. **K.R., 482, 1613.** The fact of putting arms into the hands of a soldier in arrest, or employing him on duty, does not amount to condonation of his offence. Condonation must be the deliberate act, in his magisterial capacity, of the person having power to dispose of the offence. It must be an intentional act of forgiveness. **O'Dowd, p. 27**

In the case of minor offences, the investigation of the charge may be held without the man being confined. A soldier, against whom a charge for a minor offence is pending, will not quit barracks until his case has been disposed of. He will attend all parades, but will not be detailed for duty. **K.R., 473.**

When troops are in billets or on the line of march, or accommodation for soldiers in arrest is not available, the Commanding Officer may commit a soldier in military custody (not

under sentence) to a civil prison or lock-up for a period not exceeding seven days. This period must not be exceeded under one or more warrants. For form of order *vide* Form Q., R.P., App. III., p. 718. **s. 132 (2); K.R., 476.**

Except on active service, whenever anyone is detained in military custody for more than eight days without a Court-Martial being ordered for his trial, a special report must be sent to the General Officer to whom application for trial would be made, and a similar report made every eight days till the Court assembles or the accused is released.

s. 45 (1); R.P., 1.

Any constable, Officer, soldier, or other person may apprehend anyone whom he reasonably suspects to be a deserter or absentee without leave, and bring him forthwith before a Court of Summary Jurisdiction. If the Court is satisfied that such person is a deserter, it must deliver him into military custody or remand him till he can be delivered, and a "Descriptive Return," as described in the Fourth Schedule of the Act, is forwarded to the proper military authority. **s. 154. A. Amend. Act. No 2, s. 5. K.R.. 533.** If a man surrenders to a constable in the United Kingdom as a deserter or absentee the chief officer of police at the station may deliver him into military custody without bringing him before a Court of Summary Jurisdiction, and shall send a certificate of the facts of the surrender to the proper military authority. **A. Ann. Act, 1917, s. 4.** If the man appears to be a deserter or absentee, the Commanding Officer will send an escort for him (including, if possible, men able to identify him). **K.R., 534.** If the escort fail to identify the man, they will not take him over, but will report the circumstances. **K.R., 540.**

If a deserter surrenders to a portion of his own corps, and can be identified, or if a man in uniform surrenders as a deserter, or absentee without leave, the Commanding Officer will obtain from him a written confession with his name and number, and date, etc., of desertion, and will ascertain if the confession is true. If so, the Commanding Officer will apply to the man's unit for an escort and detain him in military custody; or, if he is an absentee, send him to his unit without an escort. In either case, the Commanding Officer of the

troops will investigate the case and send to the unit a certificate signed by himself of the fact, date, and place of surrender, which will be evidence of the matters therein stated. In no other case, however, may a person not serving be taken into military custody, except for the purpose of being forthwith handed over to the Civil Power. **K.R., 517.**

Investigation of Charges.

All charges against Non-Commissioned Officers and men will be investigated without delay in the presence of the soldier in arrest by the Officer Commanding his Squadron or Company. Commanding Officers are authorized to grant large discretionary powers to these Officers of disposing of any offences with which they can deal themselves (*vide infra*, p. 65). Any not so disposed of will be investigated by the Commanding Officer. **K.R., 484.** A man charged with drunkenness is not to be brought up until he is perfectly sober. **K.R., 478.** All charges must be investigated by the Commanding Officer within forty-eight hours of their being reported to him, exclusive of Sundays, Good Friday, and Christmas Day. If for any reason this cannot be done, a report must be made to superior authority.

R.P., 2, 135 (A).

Charges for offences of Non-Commissioned Officers and men confined in the guard detention room, or of Non-Commissioned Officers reserved by the Squadron or Company Commander for disposal by the Commanding Officer are entered in the Guard Report by the Commander of the guard. Those of privates, not confined, are entered in the Minor Offence Report under the orders of the Commander of the Company, etc. If this Officer reserves such a charge for the Commanding Officer's disposal, he will send the "Charge Report" (A.F. B 252), to be entered in the Guard Report. If the charge against a man, who has been confined, is disposed of by the Company Commander, an entry will be made in the punishment column of the Guard Report.—"Disposed of on A.F. B 281." **K.R., 485.**

The investigation of offences takes place, when practicable, in the morning, before the hour of Commanding Officer's parade. The accused is marched in under escort, without his cap, **K.R., 481**; the charge against him is read out, and

the witnesses against him give their evidence; the Commanding Officer will then ask the accused what he has to say in his defence, and hear any witnesses he may wish to call. The evidence given before the Commanding Officer is not on oath, unless the accused demands it, which he has the right to do whenever the Commanding Officer deals with the case summarily. **s. 46 (6).** He may give evidence himself. **R.P., 3 (A).** The Officer Commanding the man's Company will produce his Company Conduct Sheet, and the Commanding Officer will determine how he will dispose of the case. **K.R., 485.** He will dismiss the charge if he thinks the evidence does not disclose an offence, or if he thinks the charge ought not to be proceeded with (*e.g.*, if for some trivial offence). **K.R., 488.**

If he thinks it should be proceeded with, he may—

(1) Dispose of the case summarily;
(2) Refer it to the proper superior authority;
(3) Adjourn the case to have the evidence reduced to writing. **R.P., 4 (B).**

In the last case, after the summary of evidence has been taken, it will be considered by the Commanding Officer, who may then—

(1) Remand the accused for trial by Court-Martial;
(2) Refer the case to the proper superior authority;
(3) If he thinks fit, and the accused has not claimed a Court-Martial (*vide infra*, p. 59), re-hear the case and dispose of it summarily. **R.P., 5 (A).**

When disposing of a case summarily, the Commanding Officer must see that the evidence discloses the exact offence, so that the entry in the Guard Report is substantially the charge on which the accused would be arraigned if claiming a Court-Martial. When once the accused has elected trial on a charge, as read out from the Guard Report, it cannot be afterwards increased in gravity. **K.R., 487 (A).**

The award of the Commanding Officer is entered by him in the Guard Report, and those of Officers Commanding Companies (with any remissions the Commanding Officer thinks fit to make) in the Minor Offence Report.

Copies of Minor Offence Reports (A.F. B 281) (one for each Company, etc.), are kept in the Orderly Room, and are obtained by the Company Commander, whenever he has an offence to dispose of. After filling in his disposal of each case, he returns the Form to the Orderly Room. On the last day of the week he signs it, and it is then attached to the Guard Report of that day. These documents are signed by the Commanding Officer and preserved to be laid before the General at the next Annual Inspection. **K.R., 1923.** If the Commanding Officer thinks it desirable for any reason, he can order the Minor Offence Report to be laid before him daily, for his inspection. **K.R., 485, 486.**

If an accused is remanded for further inquiry, his case must be brought under review daily till disposed of. **K.R., 485.** If at the time of investigation sufficient evidence is not forthcoming to show whether the accused is guilty or not, and there is no opportunity of completing the investigation at the time, the accused, if the offence be serious, may be released, without prejudice to his re-arrest when further evidence is forthcoming; if, however, the offence is trivial, the case should be dismissed. **K.R., 490.** A man claiming trial by Court-Martial under s. 46 (8) of the Army Act (*vide infra*, p. 59) may be released from arrest pending trial, if the Commanding Officer considers the circumstances of the case warrant this course.

K.R., 490 (A); A.O., 77/11.

There is nothing in the Army Act which prevents a Commanding Officer dealing summarily with any offence, **K.R., 547,** and indeed, he *must* so deal with the offence of drunkenness committed by a private soldier when not on duty or not warned for duty, unless the man has four previous cases of drunkenness in the last twelve months, **ss. 46 (3), 183 (1);** but the King's Regulations, para. 487, lay down that a Commanding Officer is only to deal with offences against certain sections of the Act therein enumerated, and that charges for all other offences must be referred to superior authority; except in cases of emergency, when he may dispose of the case and report to the superior Officer. If a Commanding Officer wishes to dispose of such an offence

summarily he must refer it in a letter stating the circumstances, and forward the man's conduct sheets. **K.R., 487, 550.**

When a Commanding Officer has once awarded punishment for an offence he cannot afterwards increase it, though he may subsequently diminish it. The award is considered final when the accused has been marched out from the Commanding Officer's presence. **R.P., 6** (B), and *note*. He cannot alter the record in the conduct sheets after the punishment has been completed. But an Officer not below the rank of Brigadier-General can, within two years, if he thinks the punishment illegal or excessive, order the record to be expunged. After two years from the date of award the case must be referred to the Army Council.

K.R., 507.

Questions.

1. Explain the difference between *close arrest* and *open arrest*. State the regulations as to reporting the arrest of an Officer.
2. State the principal instructions given in the King's Regulations relating to *(a)* the placing an Officer in arrest; *(b)* the restraints and conditions applicable to such Officer.
3. In reference to the arrest of an Officer, state the regulations as to (1) the person who should order the arrest; (2) the report to be made when the arrest is ordered; (3) releasing an Officer from arrest.
4. What instructions are laid down in the King's Regulations as to the course to be followed by a Non-Commissioned Officer who is about to order a soldier to be taken to the guard detention-room?
5. An Officer orders a soldier to be confined. What further steps must be taken as to reporting the offence committed?
6. A soldier has committed an offence and is taken to the guard detention room. Specify the duties of the Commander of the Guard in respect of reporting to higher authority the fact that the accused is in his custody.

7. Private A.B. is confined in the guard detention room of the Lancashire Regiment, by order of Lieutenant X., at 5 p.m., on a certain date. An hour afterwards, Lieutenant X. sends a message to the guard-room stating that he wishes the accused to be released. Is the Commander of the Guard justified in acceding to the request? Give your reasons.

8. How is a soldier treated against whom a charge for a minor offence is pending? By whom should the offence be investigated and punished?

9. An offender, while in arrest or confinement, is not to bear arms or do duty. What are the exceptions to the above general rule?

10. Point out the various provisions which prevent a soldier being detained in custody unnecessarily long, or the investigation of his case being needlessly delayed.

11. Describe in detail the whole procedure at the investigation of an alleged offence by the Commanding Officer, fully explaining the circumstances under which an oath would be administered to the witnesses in the case.

12. A Commanding Officer adjourns the investigation of an offence for the purpose of having the evidence taken down in writing. Assuming that this is done, what several courses are open to him?

13. A Commanding Officer proposes to deal summarily with an offence committed by a soldier. In the event of the soldier thinking the proposed award to be unjust, is he obliged to submit to it? Explain.

14. In respect of the investigation of a charge by a Commanding Officer, state the regulations as to (1) a witness giving evidence on oath; (2) the accused giving evidence on oath.

15. What restrictions are laid upon certain Non-Commissioned Officers relative to exercising the power of confining soldiers?

16. State briefly the regulations in connexion with the account of the accused's offence, commonly called the "Charge Report."

17. State the regulations in force which prevent a soldier being unduly detained in custody pending the investigation of the offence with which he is charged.

18. (*a*) In what circumstances may an Officer be placed under arrest?

(*b*) What action should a Commanding Officer take when an Officer is placed in arrest?

(*c*) By whom should the release of the Officer usually be ordered when such a course is deemed necessary?

CHAPTER VI.

POWERS OF COMMANDING OFFICERS.

The term Commanding Officer, in those sections of the Act relating to *Courts-Martial*, *Execution of Sentence*, and *Power of Commanding Officer*, and in the Rules of Procedure, means the Officer whose duty it is to deal with a charge against a person subject to military law of having committed an offence. For the purpose of awards of fines for drunkenness, and of a summary finding involving forfeiture of pay, it includes the Officer Commanding a squadron or company. **R.P., 129.**

A Commanding Officer, in dealing with a case summarily, has the following powers :—

(A) In the Case of a Private Soldier.

He may award either a *summary* or a *minor* punishment; **s. 46 (8), (9).** But before awarding a summary punishment, or if the award or finding will involve forfeiture of pay, he must first ask the man whether he wishes to be tried by District Court-Martial instead of submitting to his award. **s. 46 (8).** If the Commanding Officer omits to ask the man this question, the latter may still exercise his right at any time that day before the usual hour for the commitment of soldiers under sentence. **R.P., 7 (A).** If the man has claimed a Court-Martial, he is to be given an opportunity on the following day of reconsidering his decision, unless there are reasons against this course. **K.R., 496.**

The *summary* punishments which a Commanding Officer can inflict are :—

(i.) *Detention*, up to twenty-eight days, or, in the case of absence exceeding seven days, the term of detention is not to exceed the number of days of absence. **s. 46 (2), (5).** Except in cases of absence, detention exceeding seven days will not be awarded by any but Field Officers. **K.R. 493 (i).** Detention up to seven days, inclusive, will be awarded in

hours, and will begin to count from the time (usually 2 p.m.) the man is received at the detention barrack; or, if he does not go sooner to the detention barrack, it begins to count on the day after the day of award, at the usual hour for the commitment of soldiers under sentence. Detention exceeding seven days will be awarded in *days*, and begins to count from the day of award. **R.P., 6 (A); K.R., 652; R.W., 980.**

Illustrations.

The following sentences awarded on the 1st of any month will commence and expire as under :—

Punishment.	Date of going to detention barrack.	Commences.	Expires.
168 Hrs. Detention.	2 p.m., 1st	2 p.m., 1st	2 p.m., 8th
168 Hrs. Detention.	2 p.m., 2nd	2 p.m., 2nd	2 p.m., 9th
168 Hrs. Detention.	2 p.m., 3rd	2 p.m., 2nd	2 p.m., 9th
8 Days Detention.	2 p.m., 1st	1st	Midnight, 8th
8 Days Detention.	2 p.m., 2nd	1st	Midnight, 8th

A man undergoing detention may, for a fresh offence, be awarded a further sentence of detention, which begins to count from the day of award, provided that he cannot be kept in detention for more than twenty-eight consecutive days. **K.R., 494 (iv).**

(ii.) *Fines* for drunkenness, not exceeding 10s., according to scale. **s. 46 (2).**

The scale of fines is as follows :—

For the first offence, no fine.

For the second offence, 2s. 6d.

For the third and every subsequent offence :—

If within three months of the last offence, 10s.

If over three but within six months, 7s. 6d.

If over six months, 5s.

The period during which a soldier is absent from duty by reason of imprisonment, detention, or absence without leave is not counted in the time since the last case of drunkenness.

When men are re-transferred to the colours from the reserve, cases of drunkenness recorded against them before transfer to the reserve will not be taken into account in computing the fines for further instances of that offence after they rejoin the colours.

In colonial corps the fines to be levied will be one-half the foregoing amounts. K.R., 512.

Illustrations.

Private A. was drunk on the 13th February, absent from the 10th March to 9th April, and is drunk again on the 4th June. He is liable to a fine of 2s. 6d.

Private B. was drunk on the 14th March, 6th July, 16th August, and 25th November, 1900, and is drunk again on the 11th April, 1901. He is liable to a fine of 7s. 6d.

In dealing with cases of drunkenness unconnected with another offence, confinement to barracks should only be added to the fine when the circumstances are such as to add to its gravity. Detention should never be awarded for drunkenness unless the man is liable to trial, or his unpaid fines amount to 20s. K.R., 497.

When a man (not on active service) commits the offence of drunkenness when not on duty, nor warned for duty, for which he is not liable to trial, together with a more serious offence, for which he is to be tried, in order to preserve a record of the drunkenness an entry will be made by the Commanding Officer, imposing a fine if the man is liable to a fine, or if he be not, by making a note in the punishment column, "No punishment, awaiting trial on another charge." If an entry of the Court-Martial is afterwards made, these two entries are bracketed together and count as one. K.R. 511.

(iii.) *Any deductions from ordinary pay* authorized by s. 138 (4), (6) of the Army Act. This may be the amount required to make good any loss, damage, or destruction caused by his offence. In recovering stoppages from a man's pay, he must always be left a residue of one penny a day. ss. 46 (2), 138 (*a*) ; K.R., 493 (iii.).

On active service a Commanding Officer may also award :—

(i.) *Field punishment* for any period not exceeding twenty-eight days. s. 46 (2).

(ii.) *Forfeiture of ordinary pay* for any period, commencing on the day of the sentence, not exceeding twenty-eight days. This punishment may be given in addition to or without any other punishment. s. 46 (2).

This forfeiture, which is a *punishment*, must be distinguished from the forfeiture *consequential* on absence entailed by R.W., 977 (*a*). It may be given *in addition* to the latter.

Illustration.

Pte. A., on active service, is absent from Tattoo on the 1st March till 4 p.m. 3rd March and is brought before his Commanding Officer at Orderly Room on the following morning. He forfeits 3 days' pay (for the 1st—3rd March) by Royal Warrant, and the Commanding Officer can as *a punishment* order a forfeiture of any number of days not exceeding 28, which will commence from the 4th March, and will be additional to the other three.

The *minor* punishments which a Commanding Officer can inflict are :—

(i.) *Confinement to barracks* for any period not exceeding fourteen days. Confinement to barracks commences from the day of award (unless it is combined with a sentence of detention or awarded to a man already a defaulter), and the first day of the punishment ends at midnight that day. During the time a man is a defaulter he cannot quit barracks except on duty; he will attend all parades and take all his ordinary duties, and, in addition, extra fatigues as much as possible, to relieve the well-conducted men. If these extra fatigues do not keep him fully employed, he may be given punishment drill during the first ten days of his confinement to barracks. **K.R., 493** (iv.). Punishment drill consists of marching in quick time in marching order, for not more than two hours a day in mounted corps, or four hours in dismounted corps. It is not to be carried on after retreat, except under exceptional circumstances, with the sanction of the Brigade Commander. When troops are in billets, the defaulters are to be marched out along a road for the prescribed period. **K.R., 498.** Defaulters are to answer their names at uncertain hours during the day. They are only allowed to enter the canteen during one hour in the evening. **K.R. 1188** They are not required to make up any portion of their punishment which they have missed by being in hospital, or in prison or on duty. **K.R., 494** (v.)

(ii.) *Extra guards and picquets*; only awarded for irregularities when on, or parading for, these duties. **K.R., 493** (v.)

Any of the above punishments can be combined, subject to the following restrictions :—

(1) When detention exceeding seven days is given, no minor punishment can be added, **s. 46 (9)** ;

(2) The confinement to barracks will take effect on the termination of the detention.

(3) A man undergoing detention or confinement to barracks may be awarded a further sentence of either or both, provided the total period of detention does not exceed 28 days.

(4) A further award of confinement to barracks begins to count from the termination of the previous award. **K.R., 494.**

(5) A fine cannot be added to an award of field punishment. **s., 46 (2), (*b*).**

Illustrations.

Private A. is awarded 10 days' detention. No C.B. can be added.

Private B. is awarded 168 hours' detention. Any number of days C.B., not exceeding 14, may be added.

Private C. is on the 1st November awarded 168 hours' detention and 7 days' C.B. ; assuming he goes to cells on the afternoon of the 1st, his detention will expire at 2 p.m. on the 8th ; the C.B. will then commence ; the first day's C.B. will expire at midnight on the 8th, and the punishment will expire at midnight on the 14th.

A private soldier may be admonished, but is not to be reprimanded. Admonition is entered in a man's conduct sheet only in cases of drunkenness and those involving forfeiture of pay. **K.R., 493, 1924.**

In the case of absence, a Commanding Officer will make no award of forfeiture of pay, as the pay is forfeited by Royal Warrant for every day of absence, but he will inform the man of the number of days' pay forfeited, which will be noted in the column of remarks. The man has the right to claim a Court-Martial if he denies the absence. This rule as to forfeiture applies also to all Warrant and Non-Commissioned Officers. **s. 46 (8) ; K.R., 495 ; R.W., 977 (*a*).**

(B) In the Case of Non-Commissioned Officers.

In dealing with Non-Commissioned Officers, including acting Non-Commissioned Officers, the Commanding Officer cannot award any summary or any minor punishment except as follows; they may be:—

(i.) Admonished;

(ii.) Reprimanded;

(iii.) Severely reprimanded;

(iv.) Ordered to revert to their permanent grade, if an acting or lance Non-Commissioned Officer;

(v.) Removed from any appointment. (If the soldier's permanent rank is above that of Corporal, the sanction of an Officer not below the rank of Brigadier-General will be necessary.)

K.R., 302, 493, 499.

A soldier whose permanent rank is private (or equivalent rank) holding acting rank or an appointment above that of acting bombadier or lance-corporal, may be reverted to a lower grade of acting rank or to the ranks. A Non-Commissioned Officer holding acting rank in a higher grade may be reverted to acting rank of a lower grade, or to his permanent rank. These awards may be for an offence or otherwise. A.O., 88/18.

If any Non-Commissioned Officer on removal from his appointment is not qualified for the duties of his permanent rank, the Commanding Officer will refer the case to Head-quarters, with a view to his reduction by the Army Council. s. 183 (2), (c); K.R., 303.

When a Non-Commissioned Officer is convicted by the Civil Power, the case is to be reported to an Officer not below the rank of Brigadier General to decide whether he will recommend his reduction under s. 183 (2). K.R., 506.

A Non-Commissioned Officer is only permitted to resign his rank in order to escape trial with the sanction of an Officer not below the rank of Brigadier-General; an entry of the fact is made in the man's attestation paper, and signed by him and the Commanding Officer. K.R., 301, 1913 (i).

Powers of Officers Commanding Companies and Detachments.

Officers Commanding Companies, etc., may award private soldiers punishment not exceeding seven days' confinement to barracks, extra guards and picquets, and the regulated fines for drunkenness; and may deal with cases of absence where pay is automatically forfeited by Royal Warrant. They can also admonish, or reprimand, but not severely reprimand, Non-Commissioned Officers below the rank of Serjeant or appointment of Lance-Serjeant. In the case of Officers of less than three years' service, the Commanding Officer may limit their powers to three days' confinement to barracks. Such awards are subject to any remission the Commanding Officer may order, but cannot be increased. **K.R., 499, 501.**

The Officer Commanding a Detachment if of field rank has the same powers as the Officer Commanding a Corps; but if he is under this rank he may be restricted in these powers, either by the Officer Commanding the Corps if in the same command, or the Officer Commanding the Garrison or other superior authority. If, however, necessity arise, he may, notwithstanding such restriction, act to the full powers of a Commanding Officer, sending an immediate report of his action to the Officer who had restricted his powers. **K.R., 457.**

Questions.

1. Enumerate the various punishments that can be summarily awarded to a soldier by the Commanding Officer of a Corps.
2. Explain fully the power of a Commanding Officer to award detention.
3. When a Commanding Officer summarily awards detention, how should he express the period of its duration? Give the rules which determine when the period awarded shall be deemed to commence.
4. Write down the scale of fines for drunkenness.

5. The amount of a fine for drunkenness depends upon the time that has elapsed since the previous instance, and also upon the time within which a number of preceding instances have taken place. Explain how the absence, without leave, for a month, of a soldier would affect the calculation of the two periods of time in question.

6. From a soldier's conduct sheet it appears he was drunk on the following dates. What fines should have been awarded in each case :—

   (1) 5th January, 1904 (first offence).
   (2) 20th February, 1904.
   (3) 25th May, 1904.
   (4) 10th August, 1904.
   (5) 15th November, 1904.
   (6) 14th April, 1905.
   (7) 1st August, 1905.
   (8) 10th April, 1906.

7. The following instances of drunkenness are recorded against a soldier. Fine him according to the scale :—

   (1) 1st July, 1890 (first offence).
   (2) 10th December, 1890.
   (3) 15th February, 1891.
   (4) 15th July, 1891.
   (5) 5th December, 1891.
   (6) 10th July, 1892.

8. Point out the circumstances under which a Commanding Officer is restricted from awarding a punishment of detention exceeding 168 hours. When would he be justified in awarding detention for the offence of drunkenness?

9. The following offences have been dealt with summarily, and are found entered in the Company Conduct Sheet, of a private soldier who was attested on 10th April, 1895. You are required to state the fine (if any) applicable to each instance of drunkenness, and

whether the Commanding Officer could, at his discretion, have awarded detention in respect of the drunkenness in any of these cases :—

(*a*) 20th Aug., 1907. Drunk in barracks.

(*b*) 15th Sept., 1907. Drunk on parade.

(*c*) 15th March, 1908. Drunk in barracks.

(*d*) 10th May, 1908. Absent at tattoo, till tattoo 24th May, for which he was awarded detention for 15 days.

(*e*) 10th July, 1908. Drunk, and riotous in the town.

(*f*) 20th Aug., 1908. Absent at tattoo, till 10 a.m., 21st August.

(*g*) 30th Sept., 1908. Drunk, after being warned for guard.

10. A soldier is sent for trial for an offence which he committed while drunk, but he is not liable to trial by Court-Martial for drunkenness. How should the Commanding Officer deal with the offence of drunkenness ?

11. Describe, fully, the powers of a Commanding Officer to award detention for the offences of (1) absence without leave, and (2) drunkenness.

12. Explain, fully, the power of a Commanding Officer to punish a private soldier for the offence of absence without leave.

13. State the regulations affecting the award of confinement to barracks, and combined awards of detention and confinement to barracks.

14. A soldier is awarded 10 days' confinement to barracks. Explain, in full detail, the effect of this punishment.

15. At orderly-room, at 9 a.m., on the 1st June, the following awards are made :—

    (1) 48 Hrs. detention.

    (2) 168 Hrs. detention and 7 days' C.B.

    (3) 10 days' detention.

    (4) 14 days' C.B.

    State the exact time at which each of these punishments expires.

16. Under what circumstances would a soldier be ordered to pay for his drunkenness a fine of ten shillings, and a fine of twenty shillings? How is the amount of the fine recovered from the soldier?

17. A Commanding Officer, at 9 a.m., on the 1st May, makes the following awards :—

    (1) 48 Hrs. detention.

    (2) 8 days' detention.

    (3) 10 days' C.B., followed by a second award, on the 8th May, of 96 Hrs. detention.

    (4) 10 days' detention, followed by a second award, on the 5th May, of 10 days' detention.

    On what day and hour will these punishments respectively terminate?

18. Point out the defects (if any) in the following summary awards :—

    (1) 7 days' detention, and 10 days' C.B.

    (2) 10 days' detention and 7 days' C.B.

    (3) Fined 12s. 6d.

    (4) 56 days' C.B.

    (5) Forfeiture of two good conduct badges.

19. What constitutes a day for the purpose of forfeiture of pay? When a soldier absents himself for three days, is any discretion left to the Commanding Officer in respect of forfeiture of pay?

20. Under what circumstances would a soldier forfeit one, two, and three days' pay respectively? How would the forfeiture be recorded?

21. State the forfeiture of pay in each of the following cases of absence without leave (no duty being thrown on another soldier):—

    (1) 10 a.m., 1st May, to 5 p.m., 1st May.
    (2) 10 p.m., 1st June, to 2 a.m., 2nd June.
    (3) 10 p.m., 1st July, to 6 a.m., 2nd July.
    (4) 10 p.m., 1st August, to 10 p.m., 2nd August.
    (5) 10 p.m., 1st September, to 3 a.m., 4th September.

22. State the forfeiture of pay in the following cases of absence without leave. It may be assumed that, by reason of the absence of the offender, military duty was thrown upon another soldier:—

    (1) 10 a.m., 1st June, to 6 p.m., 1st June.
    (2) 8 p.m., 2nd June, to 3 a.m., 3rd June.
    (3) 10 p.m., 3rd June, to 3 a.m., 4th June.
    (4) 10 p.m., 4th June, to 2 a.m., 6th June.
    (5) 10 p.m., 6th June, to 6 a.m., 11th June.

23. Apply the regulations as to forfeiture of pay for absence to the following cases:—

    Private A. absent from tattoo 10 p.m., 1st June, to 2 a.m., 2nd June.
    Private B. absent from tattoo 10 p.m., 1st June, to 7 a.m., 2nd June.
    Private C. absent from tattoo 10 p.m., 1st June, to 3 p.m., 2nd June.
    Private D. absent from tattoo, 10 p.m., 1st June, to 6 a.m., 4th June.

    What difference would arise in each case in the event of the soldier's absence preventing his fulfilling a military duty which was thereby thrown on another person?

24. Describe the different ways in which a Commanding Officer can deal with offences committed by Non-Commissioned Officers in his own Corps.

25. How would a Commanding Officer deal with the following cases:—(1) A Band-Serjeant is found unfitted for his post, (2) a Serjeant is convicted of an assault on the police by the Civil Power?

26. Offences coming under the following general headings are the subject of investigation. Distinguish between those that could be summarily treated by a Commanding Officer, and those which would have to be sent for trial by General or District Court-Martial:—

(1) Disobeying a lawful command.
(2) Offering violence to a superior.
(3) Breaking out of barracks.
(4) False answer on attestation.

27. Explain fully the power of a Commanding Officer to deal with offences committed by Non-Commissioned Officers. To what extent may an Officer Commanding a Company deal with such cases?

28. A Serjeant and a Lance-Corporal of a certain Corps have been convicted and punished for an offence by a Civil Court; what further steps should be taken, according to regulations, for determining whether these Non-Commissioned Officers should respectively continue to hold their present positions, and with whom would the decision rest in each case?

29. To what extent may a Commanding Officer delegate to the Officer Commanding a Company the power of awarding punishment for minor offences?

30. How are "minor offences" usually dealt with in respect of (1) the custody of the offender, (2) the investigation and disposal of the offence, (3) the record of the punishment?

31 What powers of punishment may be exercised by Officers Commanding Detachments?

32. Explain what punishments may be combined in one award and when the accused must necessarily be given the choice of being tried by Court-Martial.

33. As a Commanding Officer deal summarily with the following offences, awarding the most severe punishment in your power, and noting any forfeiture of pay that will be incurred.

    (1) Private A. absent from 10 p.m., 1st September, 1906, till 5 a.m., 3rd September, 1906.

    (2) Private B. absent from 10 p.m., 1st September, 1906, till 6 a m., 12th September, 1906.

    (3) Private C. drunk on Guard (not liable to a fine).

    (4) Lance-Corporal D. fighting in barracks.

34. When is detention awarded in hours, and when in days? Show, by examples, when periods of imprison ment in either case commence and expire.

35. Under what circumstances is a soldier given the option of being tried by Court-Martial instead of submitting to the award of his Commanding Officer? What happens if, by mistake, the option is not given him at the time the case is being dealt with?

36. A corporal of the Regular Forces who has been remanded for trial by Court-Martial, asks to be allowed to resign his rank instead of being tried. What authority would be necessary to enable him to do so, and what record of the fact, if any, is made in the soldier's documents?

37. Under what authority does a Company (Battery or Squadron) Commander exercise his powers of punishment for offences against the Army Act, committed by soldiers?

CHAPTER VII.

PROCEEDINGS BEFORE TRIAL.

Before considering the various steps to be taken when a soldier has been remanded for trial by Court-Martial, it will be convenient to note here the peculiar case of a man having confessed either desertion or fraudulent enlistment, and his trial for the offence being dispensed with by competent military authority. When a man has signed a confession of having committed either of these offences, and it is not considered desirable to try him, application is made to one of the authorities named in s. 73 of the Army Act (usually the Brigade Commander, if not below the rank of Brigadier General) for authority to dispense with his trial. The confession should accompany the application, and, if possible, evidence as to its truth. The form of confession to be used is given in K.R., para. 542. If the Brigade Commander, or other competent authority, decides that the man shall not be tried, he issues an order dispensing with his trial (for form of order *vide* A.F., A. 46). This will be equivalent to a trial by Court-Martial, and will be entered in the man's Regimental and Company conduct sheets. He will forfeit all service towards limited engagement prior to the date of signing the order. And he will suffer the same forfeitures and deductions from pay as if he had been convicted by Court-Martial, except such as are specially mentioned in the order.

ss. 73, 79 (2) ; R.P. 126 (F.) ; K.R., 541—544.

Summary of Evidence.

When a soldier has been remanded for trial by Court-Martial, the first thing to be done is to take the summary of evidence. This is a statement taken down in writing, in a narrative form, of the evidence given by the witnesses at the investigation held before the Commanding Officer. It is taken in the presence of the accused and of the Commanding

Officer, or some Officer deputed by him. An officer who is a material witness must not be detailed for this duty. The accused may question the witnesses and these questions and answers will be included if material. The accused can give evidence himself and call witnesses in his defence, and make any statement he likes, which will be added in writing, but he cannot be required to sign it, and should be warned that anything he says may be used against him at his trial. The witnesses sign their statements, and the whole summary is signed by the Officer before whom it is taken, who will add a certificate that the requirements of R.P. 4, have been complied with. The evidence is not given on oath. The accused's evidence and any statement he makes must be kept quite distinct.

R.P., 4 (C), (D), (E), and *notes* 7, 8 ; **Man., p. 703.**

In the case of an Officer a summary of evidence need not be taken unless he demands it ; but he must then be furnished with an *abstract* of the evidence at least twenty-four hours before his trial. **R.P., 8.**

The uses of this summary of evidence are : first, it is forwarded with the application for trial to the Convening Officer, to enable him to see that there is a *prima facie* case against the accused. If he decides to try him, the summary is forwarded to the President, to let him get a general idea of the case he is going to try ; it is laid before the Court by him, and can be used in checking the evidence given by the witnesses at the trial. **R.P., 17** (A), (E), and *note* 5. If the accused pleads guilty, it is read to the Court to let them see the circumstances under which the offence was committed, and thus guide them in determining the sentence, and it is then attached to the Proceedings to guide the Confirming Officer. **R.P., 37** (B), **App. II., p. 564.**

Framing Charges.

The next step will be to draw up a charge sheet containing the charges which the evidence given in the summary discloses, and upon which it is intended to try the accused.

A charge is an accusation that a person subject to military law has been guilty of an offence. A charge-sheet

contains the whole issue or issues to be tried at one time and may contain one or more charges. **R.P., 9.**

Every charge sheet must begin with the name and description of the accused and an averment that he is subject to military law. If the accused is a member of the Special Reserve or the Territorial Force, or a civilian, it must be stated how it is that he is subject to military law. **R.P., 10** and *note 2*. The proper forms to be used for the commencement of a charge sheet are given in R.P., App. I., Part I., p. **649** *et seq.*

Each charge is divided into two parts :

(1) The statement of the *offence*.

(2) The statement of the *particulars*.

The statement of the *offence* must, unless it is a civil offence, be in the words of the Army Act, and, if a civil offence, in such words, not necessarily technical, as will sufficiently describe the offence. When the charge is framed under s. 41 for committing a civil offence, the essence of the offence must be expressed in the charge, *e.g.*, if charged with damaging property it must be stated the damage was done *maliciously*. **R.P. 11** (B), (C), and *note 5*. The statement of the offence will be in the forms given in R.P., App. I., Part II., pp. 650—659. In using these forms, the following rules must be observed.

Where two or more words or expressions are bracketed together, the particular word or expression which most accurately describes the offence must be used.

R.P. App. I. (5).

Illustration.

s. 8 (1). **Striking / Using violence to / Offering violence to** } **his superior Officer, being in the execution of his office.**

Here, the expression used must be "striking," "using violence to," or "offering violence to" according as the accused actually *struck*, or *used other violence* (*e.g.*, kicked), or *offered violence* (*e.g.*, attempted to strike).

s. 24 (2). **Losing by neglect** { **his arms. / his ammunition. / his equipments. / his instruments. / his clothing. / his regimental necessaries. / a horse of which he had charge.**

Here, the words used will be those which describe the articles lost, *i.e.*, "arms" if they are a rifle or bayonet; "equipments" for belts, water bottle, etc., "clothing" for tunic, cape, boots, etc.; "regimental necessaries" for shirt, socks, brushes, etc.

The word "and" may be used to couple two or more such words or expressions; but a charge must never be in the alternative; thus, the word "or" joining two such expressions would be a bad charge. **R.P., App. I. (7).**

Illustrations.

"Losing by neglect his clothing *and* regimental necessaries" is a good charge.

"Losing by neglect his clothing *or* regimental necessaries" is a bad one, as it leaves it doubtful whether the accused is charged with losing his clothing *or* his necessaries.

Where, in the forms, words in italics, enclosed in square brackets, are shown, it will be necessary to substitute for these general words the exact words defining the circumstances of the offence. **R.P., App. I. (11).**

Illustration.

s. 11. Neglecting to obey { General / Garrison / [*other*] } Orders.

If, for instance, the accused has disobeyed Regimental Orders, then the word "Regimental" must be substituted for [*other*] in the statement of the offence.

Words shown in square brackets [ ] will be adopted or not, according to circumstances. **R.P., App. I., (12).**

Illustration.

s. 12. [When on active service] deserting His Majesty's service.

The words in brackets must be omitted if the accused was not "on active service."

The statement of the *particulars* need not be in any prescribed form of words, but they must state such circumstances concerning the offence as will enable the accused to know what the particular crime he is charged with consists of. **R.P., 11 (D).** All the ingredients necessary to constitute the offence should be stated. If the exact place is the essence of the offence it must be stated, otherwise a general description will suffice, and sometimes such words as "near" or "between" may be used. Similarly, a date should be stated, and if the exact date is not known, the words "on or about" may be used; but if the exact date and time are of the essence of the offence they must be stated. Sometimes the particulars in one charge may refer to the particulars in another, *e.g.*, "at the place and on the date mentioned in the first charge."

R.P., 11 (E); App. I., (16)—(22).

When the offence has caused any loss, for which it is desired the Court should award stoppages, the particulars of this loss must be added, as, for example, when a man is charged with fraudulent enlistment, an averment is added, stating that he "thereby obtained a free kit, value ——." A similar averment is added when a man is tried for improperly enlisting from the army reserve, provided the trial takes place within three months of the offence.

R.P., 11 (F). App. I., (23) ; K.R., 561.

It has been ruled that the expression "free kit" only includes the articles of necessaries mentioned in Clothing Regulations, p. 136, Table xvi.

In the case of making away with or losing kit, values are only put in the charge sheet against those articles which are Government property* ; those which are the soldier's own property he will have to replace at his own expense, without any sentence of the Court. **K.R., 563.**

The statement of the *particulars* must correspond in substance with the statement of the *offence ;* if there is such a divergence between them that in effect one specifies one offence and the other another, the charge is illegal and cannot stand. **O'Dowd, p. 22.**

In framing charges under s. 24, in the absence of evidence of some positive act of pawning or selling, etc., a charge of "making away with" should not be framed, but the accused should be charged with "losing by neglect." **K.R., 562.**

It must be observed, as already noted against the different sections when considering the different crimes, that some of them can only be committed by an Officer, and others by a soldier.

Illustrations

s. 10 (4).—Breaking out of barracks,
Could *not* be charged against an Officer.
s. 16.—Behaving in a scandalous manner unbecoming an Officer and a gentleman,
Could only be charged against an Officer.
s. 18 (4).—Stealing goods, the property of a comrade,
Could *not* be charged against an Officer.
s. 27.—Striking a soldier,
Could only be charged against an Officer or N.-C.O., *not* a Private.

---

*Including all clothing and necessaries in the case of a man of the Special Reserve. **K.R., 564.**

Each charge must disclose one offence only, and in no case can an offence be described in the alternative in the same charge. **R.P., 11** (A). Thus, it would be wrong to charge a man with "making away with by pawning *and* selling his arms, etc." If the evidence shows that he pawned some articles and sold others, two charges must be framed, one charging him with *pawning* certain things, the second with *selling* the other articles.

R.P., App. I., (7)—(10).

A single transaction though technically including more than one offence should as a rule not be made the subject of more than one charge. On the other hand theft of goods belonging to different owners must not be included in one charge. **R.P., 11** (A), *note* 2.

When it is doubtful whether the facts proved by the evidence are more correctly described by one word or expression than another, alternative charges may be framed, each charge containing one of the expressions which appear applicable to the facts capable of being proved, *e.g.*, "Stealing goods, the property of a comrade," or "Receiving, knowing them to be stolen, goods, the property of a comrade." **R.P., App. I., (6)**

Separate charge sheets are used to prevent the embarrassment which might arise to the Court or the accused by trying several charges at one time, especially if the facts are very complicated, or if the offences took place at different times, or if quite different sets of witnesses are required to prove the various charges. In practice, therefore, not more than three or four charges should be placed in the same charge sheet, and offences of different descriptions should be in separate charge sheets, unless they form part of the same wrongful transaction. **R.P., 62** (A), *note*.

When a soldier is arraigned on a serious charge, minor charges against him are not usually included in the charge sheet. **K.R., 568.**

The charge sheet must be signed by the accused's Commanding Officer, and the section of the Act under which each charge is framed should be inserted in the margin in

red ink. If the accused has elected to be tried, it should be so stated at the top of the charge-sheet.

R.P., 9 (*note*); Man., p. 703.

Illustrations.

1. Evidence tends to prove that Private A. sold to a civilian two shirts which he had been seen to take stealthily out of Private B.'s valise.
2. Private C., who has not been drunk for over a year, gets drunk, uses insubordinate language to Serjeant D., and knocks him down.
3. Private E., a Special Reservist out for training, is awarded 7 days' C.B. by his Commanding Officer; he is found by the picquet in the town that evening.

The following would be the proper charge sheets to frame against these men:—

1. CHARGE SHEET.

The accused No. 1418, Private John A.———, 1st Bn. Royal Scots, a soldier of the Regular Forces, is charged with—

18 (4). Stealing goods, the property of a comrade, in that he

at Edinburgh, on the 29th October, 1916, stole two flannel shirts, value 7s. 10d., the property of James B.———, a private of the same regiment.

Edinburgh, 31st Oct., 1916. D. GORDON, Lt.-Col., Commg. 1st Bn. R. Scots.

2 CHARGE SHEET.

The accused, No. 5396, Private William C.———, 2nd Bn. East Kent Regiment, a soldier of the Regular Forces, is charged with—

s. 8 (2). Striking his superior Officer, in that he

at Aldershot, on the 30th October, 1916, struck with his clenched fist Serjeant Peter D.———, of the same regiment.

Aldershot, 1st Nov., 1916. H. SMART, Lt.-Col., Commg. 2nd Bn. Buffs.

3. CHARGE SHEET.

The accused, No. 2278, Private Patrick E.——, a Special Reservist, of the 3rd Bn. Connaught Rangers, out for training, is charged with—

s. 10 (4). Breaking out of camp, in that he

at the Curragh, on the 1st June, 1914, broke out of camp when confined thereto by order of his Commanding Officer.

Curragh, 3rd June, 1914. M. FITZGERALD, Lt.-Col., Commg. 3rd Bn. Conn. Rangers.

APPLICATION FOR TRIAL.

If the Court before which the accused is to be arraigned is a Regimental Court-Martial, it will be convened, as a rule, by his Commanding Officer; if, however, the Court is to be convened by some higher authority, an application for the assembly of the Court must be made on A.F. B 116, and the documents specified in the Form must be sent in with it. These documents are:—

1. The charge-sheet in duplicate.

2. The summary of evidence.
3. The accused's Regimental and Squadron or Company Conduct Sheets.
4. List of witnesses for the prosecution and defence, with their present stations.
5. Statement as to the character and service of the accused on A.F. B 296.

This last-named document contains the following information :—

(1) A summary of the entries (if any) in the accused's Company Conduct Sheet, distinguishing between those within the last twelve months and since enlistment; and instances of gallant conduct (if any). If the charge is for drunkenness the entries for drunkenness must be recorded separately with dates.

(2) Whether the accused has been previously convicted. If so, the previous convictions are set out in a schedule attached to the Statement.

(3) Whether he is under sentence already, and, if so, for how long.

(4) How long he has been awaiting trial.

(5) His age, date of attestation, service towards discharge or transfer to Reserve; service towards pension; any decorations the Court can forfeit; (if a Warrant Officer or Non-Commissioned Officer, how long he has served in the different ranks).

The names of the Officers who investigated the case, including the Company Commander who made the preliminary inquiry and the Officer who took down the summary of evidence are stated, in order that they may not be detailed as members of the Court. If there has been a Court of Inquiry respecting any matter connected with the charge, the date and place will be stated.

The certificate at the foot of the application, to the effect that the accused is in a good state of health or otherwise, must be signed by the Medical Officer.

Man., p. 727; R.P., 19 (B) App. II., pp. 693, 694; A.F., B. 116.

If the accused elected to be tried instead of submitting to a summary award of his Commanding Officer, it should be so stated on the application. **Man., p. 703.**

The time which elapses between the Commanding Officer's remanding the accused for trial and the issue of the order for the assembly of a Regimental Court-Martial, or forwarding the application for a higher Court, should not, under ordinary circumstances, exceed thirty-six hours. **R.P., 5 (B).**

Duties of Convening Officer.

On receiving an application for a Court-Martial, the Convening Officer should satisfy himself that the charge sheet discloses an offence against the Army Act and the evidence in the summary justifies a trial. He should also be careful that the proposed Court has jurisdiction to try the accused, **R.P., 17 (A), (B).** He may convene either a General Court-Martial or District Court-Martial if he has a warrant enabling him to do so, or he may refer the case to superior authority, or he may send back the application telling the Commanding Officer to dispose of it summarily or by Regimental Court-Martial. **K.R., 548.** In the United Kingdom, if he proposes to convene a General Court-Martial he must submit the charge sheet and summary of evidence to the Judge Advocate-General, with a request that a Judge Advocate may be appointed to the Court. **R.P., 17** (*note 2*). **101 (A)** (*note*). If the Officer who would ordinarily convene a General or District Court-Martial is the accused's Commanding Officer or has investigated the case, he cannot dispose of it, but must refer it to superior authority. **K.R., 549.** A Non-Commissioned Officer above the rank of Corporal is only to be tried by a Regimental Court-Martial when an Officer having power to convene a District Court-Martial decides that a higher Court cannot, having due regard to the public service, be convened. **K.R., 438.**

If he decides to convene a Court, he must issue the necessary order (for Forms *vide* R.P., App. II., pp. 677, 678); he must appoint the President by name, and detail the necessary number of Officers and any waiting members he may think expedient, either by name or by ranks and units, **ss. 47 (3), 48 (9),** and *notes;* **R.P., 17 (D), K.R., 577.**

He will deal with the various documents sent in with the application for trial as follows :—

One copy of the charge sheet will be filed with the application.

The other copy of the charge sheet and the summary of evidence will be sent to the President.

The soldier's conduct sheets, the list of witnesses, and the statement as to the accused's character and service, will be sent back to his Corps.

R.P., 17 (E) ; Man., p. 727.

The Convening Officer is responsible for the legality of the charge sheet, **R.P., 17 (A)**, and that a duly qualified Officer is named to act as Prosecutor ; if he has no one serving under his command fit for the duty, he must apply to superior authority for one. **K.R., 573.**

As already noted, if more than fifteen days in the United Kingdom, or thirty days elsewhere, elapse between the receipt of an application for a Court-Martial and the disposal of the case, either by the assembly of the Court or otherwise, the General Officer must report the circumstances to the Army Council, or in India to the Commander-in-Chief in India. **R.P., 17 (C).**

Defence.

An accused person is to be given every facility for preparing his defence, and is to be allowed free communication with his witnesses and any friend or legal adviser he wishes to consult. **R.P., 13.** He is to be warned for trial by an Officer, not less than eighteen hours before trial in the case of a Regimental Court-Martial, or twenty-four hours in the case of any other Court-Martial. The Officer warning him is to give him a copy of the charge sheet, and will read it to him, and, if necessary, explain it. A copy of the summary of evidence is also to be given to him gratis, and he is to be asked if he wishes any witnesses summoned for his defence. He is not bound to disclose his witnesses, but, if he gives their names, reasonable steps will be taken for securing their attendance, otherwise the onus of procuring them will rest on him. He may be required to undertake to defray the cost of their attendance. **R.P., 14, 77, 78 (A).** A

list of the Officers who are to form the Court, together with any waiting members, will be given to him, if he so desires, as soon as they have been detailed; in the case of a General Court-Martial, this list would be given in any case. **R.P., 14,** and *notes.* If he is to be jointly tried, he must be so informed, to give him an opportunity of claiming separate trial if he has grounds for such claim. **R.P., 15.** If it is intended to employ Counsel for the prosecution, he must be so informed at least seven days before the trial, unless he has given notice that he intends to employ Counsel for his defence. **R.P., 89** (B). If a Judge-Advocate has been appointed, he can consult him on any point of law.

R.P., 103 (A).

QUESTIONS.

1. Describe any peculiarities that exist with regard to the trial and punishment of the offences of desertion and fraudulent enlistment.
2. Under what circumstances is the document known as the "Summary of Evidence" prepared? Explain fully the manner in which, and by whom, it is prepared, and the uses to which it is, or might be, put, prior to a trial by Court-Martial.
3. Describe the "Summary of Evidence," and distinguish between it and the "Abstract of Evidence" referred to in the Rules of Procedure.
4. Describe in full detail an ordinary charge sheet; and explain why more than one charge sheet is sometimes made out when an accused is to be brought before a Court-Martial.
5. A soldier on parade, on being reproved by his Captain, throws his rifle violently to the ground; the Captain orders him to pick it up, and repeats the order. The soldier does not obey, but folds his arms, and says, "I won't soldier at all if I'm bullied like this." The rifle is damaged to the value of 4s. Draw up a complete charge sheet for his trial by Court-Martial.
6. Evidence tends to prove that Private A. sold to a civilian the following articles, viz., one pair of his regimental trousers, the cape belonging to his great-coat, and

two shirts belonging to Private B., which Private A. had been seen to take stealthily out of B.'s valise. Draw up a charge sheet for the offences disclosed, in proper form, to be laid before a Court-Martial. (Minor particulars not herein given should be supplied from invention when necessary.)

7. A soldier of the Special Reserve, out for training, is to be tried by Court-Martial for drunkenness. Draw out a complete charge sheet, filling in the form with supposititious details as to name, date, place, etc.

8. In a charge of "Losing by neglect, equipment, clothing, and regimental necessaries," the value of the articles lost is sometimes inserted and sometimes omitted. Explain why this is the case.

9. Give the "statement of offence" and the section of the Army Act applicable to the following cases :—

   Private A., serving in the Yorkshire Regiment, is discovered to be a deserter from the Navy.

   Private B., in the Hampshire Regiment, is recognised as an Army reservist, and it is known that he has been drawing his reserve pay.

   Private C., in the Bristol Regiment, is found in possession of a watch, the property of a soldier who sleeps in the same barrack room.

   Gunner D., of the Royal Artillery, is apprehended while climbing over the barrack wall in plain clothes.

10. How would the statement of the offence be worded in the case of theft from (1) a soldier, (2) a civilian?

11. Explain what is meant by alternative charges. Would such charges be placed on one charge sheet or separate charge sheets? State the circumstances under which, as a general rule, charges would be entered on separate charge sheets.

12. State the regulations as to the inserting on a charge sheet the value of articles lost or damaged through the commission of the offence charged.

13. What is meant by the summary of evidence? How is the summary affected by the fact that the accused gave evidence himself at the investigation previously held?

14. No. 245, Lance-Corporal X, of the 2nd Bn. Essex Regiment, is sent to the post office to forward an official telegram, and is given 3s. by Captain Y., of his regiment, to pay for it. He does not send the telegram, and "embezzles the public money" given to him. Frame a complete charge sheet to deal with the case, and state the maximum punishment that can be awarded for the offence

15. A Commanding Officer, after investigating a charge against a soldier, remands him for trial by District Court-Martial. Describe the several steps now taken with reference to—
    (*a*) Making the application for his trial.
    (*b*) Warning the accused and giving him various facilities to meet his trial.

16. Who is responsible for the legality of the charge sheet? Under what circumstances would alternative charges be framed?

17. Describe the warning of the accused for trial in a case when every possible information is afforded him.

18. State the regulations in force which prevent a soldier being unduly detained in custody pending the assembly of a District Court-Martial to deal with his case.

19. Specify the points upon which a Convening Officer is to satisfy himself before convening a District Court-Martial for the trial of an accused person.

20. At Salisbury, on the 10th May, 1911, when the 5th Bn. ——shire Regiment Territorial Force, was out for annual training, No. 211, Private A.B., of that battalion, after having been awarded a punishment by his Commanding Officer, said to Serjeant X.Y., of the same unit: "I'll be revenged on you for this yet." Private A.B. is to be tried by a District Court-Martial for the offence. Prepare a charge sheet to meet the case.

CHAPTER VIII.

COURTS-MARTIAL: THEIR DESCRIPTION, COMPOSITION, AND POWERS.

There are three ordinary kinds of Courts-Martial, the *General*, the *District*, and the *Regimental*. There is also another Court, which is only assembled on active service, or in places beyond the seas, when a General Court-Martial cannot be convened; this is called the *Field General Court-Martial*, and will be dealt with in Chapter XII. We will consider each of the other Courts in order.

(A) General Court-Martial.

Convening Authority.—The King or some qualified Officer having a warrant authorizing him to convene such a Court. s. 48 (1). This warrant may come immediately from the King or from some Officer authorized to delegate his authority. s. 122 (1). A "qualified Officer" means any Commanding Officer not below the rank of Field Officer, the Lord Lieutenant of Ireland, the Governor-General of India, or the Governor of a Colony Commanding any part of His Majesty's Forces, and, in special cases abroad, an Officer not below the rank of Captain. s. 122 (6).

These warrants are usually issued:—

At home—to the General Officers Commanding-in-Chief a Command, the General Officers Commanding the London District, Jersey and Guernsey;
In India—to the Commander-in-Chief;
In the Colonies—to the General Officer Commanding;
On Active Service—to the General Officer Commanding.
Man., V. 20, 21.

For forms of Warrants *vide* Man., pp. 722—726.

For the trial of a Marine, an Admiralty warrant is also necessary, except in special cases. s. 179 (1).

Legal Minimum.—In the United Kingdom, India, Malta, or Gibraltar, nine; elsewhere, five. It is usual, especially if the trial is likely to be long, to detail more than the legal minimum. **s. 48 (3).; K.R., 576.**

Service required.—Each Officer must have held a commission for not less than three years. A commission in the Special Reserve, Militia, Yeomanry, Volunteers, Territorial Force, Colonial Forces, or Indian Volunteers, is reckoned in this period. **s. 48 (3).**

Corps of Members.—They must not all belong to the same Regiment of Cavalry, or Battalion of Infantry, or Brigade of Artillery, unless the Convening Officer certifies in the order convening the Court that, having due regard to the public service, other Officers are not available. **R.P., 20 (A).** and *note*.

Rank of President.—Not below Field Officer, unless the Convening Officer is below that rank or certifies in the order convening the Court that, having due regard to the public service, a Field Officer is not available, when he may be a Captain. **s. 48 (9).** If a General Officer or full Colonel is available as President, no Officer of inferior rank should be detailed. **K.R., 578.**

Rank of Members.—Five must not be below the rank of Captain. **s. 48 (3).** When an Officer is being tried, all the members must be of equal or superior rank to the accused, unless the Convening Officer certifies in the order convening the Court that Officers of that rank are not available, and in no case may an Officer under the rank of Captain sit on a Court for the trial of a Field Officer. **s. 48 (7); R.P., 21 (B).** If a Commanding Officer is being tried, as many members as possible are to be Officers who have held, or are holding, similar commands to that held by the accused. **K.R., 578.**

Jurisdiction.—All persons subject to military law. **s. 48 (6).**

Powers of Punishment.—Death or any less punishment. **s. 48 (6).**

Confirming Authority.—In the United Kingdom the King, when the sentence on an Officer is death, penal servitude, cashiering or dismissal, or on a soldier death or

penal servitude; in other cases an Officer having a warrant authorising him to confirm; elsewhere an Officer having a warrant authorizing him to confirm, whether such warrant comes immediately from the King or from some Officer authorized to delegate his authority. s. 54 (1*b*). Provided that by the warrants now in force no sentence of death, penal servitude, cashiering, or dismissal, passed on an Officer, can be confirmed by anyone but the King, or the Commander-in-Chief in India, or the Commander-in-Chief of a force on active service. The warrants issued to General Officers at home to convene General Courts-Martial do not authorize them to confirm. **Man., pp. 722—725.**

(B) District Court-Martial.

. *Convening Authority.*—An Officer authorized to convene a General Court-Martial, or an Officer not below the rank of Captain authorized to convene a District Court-Martial by a warrant from the first mentioned Officer.

ss. 48 (2), 123 (1).

These warrants are issued by General Officers Commanding-in-Chief to Divisional Commanders, Commanders of Coast Defences, Brigadiers, Officers Commanding Districts, and others not below the rank of Lieutenant-Colonel.

K.R. 54.

For form of Warrant *vide* Man., p. 726.

Legal Minimum —Three is the number fixed by the Act, s. 48 (4); but in doubtful or difficult cases, five should, if possible, be detailed. **K.R. 576.**

Service required.—Each Officer must have held a commission for not less than two years. **s. 48 (4).**

Corps of Members.—They must not all belong to the same Regiment of Cavalry or Battalion of Infantry, or Brigade of Artillery, unless the Convening Officer certifies in the order convening the Court that, having due regard to the public service, other Officers are not available.

R.P., 20 (A)., and *note*.

Rank of President.—Not below Field Officer, unless the Convening Officer is below that rank or certifies in the order convening the Court that, having due regard to the

public service, a Field Officer is not available, when he may be a Captain; or if the Convening Officer certifies a Captain is not available, he may be a Subaltern, **s. 48 (9)**; except for the trial of a Warrant Officer, when he cannot be under the rank of Captain. **s. 182 (4).** But when a Captain is not available as President, the power of appointing a Subaltern should only be exercised in cases of necessity. **K.R., 558.**

Rank of Members.—When the Court consists of only three members not more than one should be a Subaltern. **K.R., 576.**

Jurisdiction.—All persons subject to military law, except Officers and Warrant Officers holding honorary commissions. **ss. 48 (6), 190 (4).**

Powers of Punishment.—Imprisonment with, or without, hard labour not exceeding two years, or any less punishment, **s. 48 (6)**; except in the case of Warrant Officers, when the only punishments this Court can inflict are:—Forfeitures; fines; stoppages; dismissal; reduction to the bottom or any other place in his rank, or to an inferior class of Warrant Officer (if any); or reduction to a lower grade, or, if originally enlisted as a soldier, to the ranks. **s. 182 (2).**

Confirming Authority.—An Officer authorized to confirm a General Court-Martial, or an Officer authorized to confirm a District Court-Martial by a warrant from the first mentioned Officer. **s. 54 (1c); Man., p. 726.**

(c) Regimental Court-Martial.

Convening Authority.—Any Officer authorized to convene a General Court-Martial or District Court-Martial, or any Commanding Officer not below the rank of Captain; or, on board ship, a Commanding Officer of any rank. No warrant is required. **s. 47 (1).**

Legal Minimum.—Three Officers. **s. 47 (2).**

Service required.—Each Officer must have held a commission for not less than one year. **s. 47 (2)** and *note*.

Corps of Members.—May belong to the same or differen Corps. **s. 50 (1).**

Rank of President.—Not below Captain, except on the line of march, or on board ship, or unless the Convening Officer certifies in the order convening the Court that, having due regard to the public service, a Captain is not available, when he can be of any rank. s. 47 (4).

Jurisdiction.—Cannot try an Officer, a Warrant Officer, or a person not belonging to His Majesty's Forces. ss. 47, (5), 182 (1), 184 (2). A Non-Commissioned Officer above the rank of Corporal is only to be tried by this Court if an Officer having power to convene a District Court-Martial decides that it is not practicable to convene a higher Court.

K.R., 438.

Offences under ss. 17, 18 (4) or (5), or 41 are not to be dealt with by Regimental Court-Martial. K.R., 583 (ii.)

Powers of Punishment.—Detention not exceeding forty-two days, or any less punishment, except discharge with ignominy or forfeitures.

ss. 44 (11), 47 (5) R.W., 1022, 1043, 1065, 1160.

Confirming Authority.—The Convening Officer or any Officer having power to convene such a Court at the time of the submission of the finding and sentence. s. 54 (1*a*).

Whenever a member of the Special Reserve or the Territorial Force is being tried by either of these Courts, at least one member of the Court should, unless the Convening Officer states in the order convening the Court that it is not practicable, belong to that branch of the Forces to which the accused belongs. The Adjutant of a Corps of the Special Reserve or the Territorial Force is not held to be an Officer of the Corps for this purpose. R.P. 20 (B) and *note* 2.

Questions.

1. By whom may the several Courts-Martial be convened, and from what sources do the Convening Officers derive their authority?
2. State the regulations as to the numbers, army service, and corps, of members of General, District, and Regimental Courts-Martial.
3. Enumerate the punishments which may be awarded to a soldier by the sentence of a General Court-Martial.

4. Enumerate the punishments that can be awarded by a District Court-Martial, and point out the cases in which the said punishments can be combined.

5. The composition of a Court-Martial is in some cases affected by the position of the accused. State the regulations that must be observed in detailing the members of a Court-Martial for the trial of (1) a Commanding Officer, (2) a Warrant Officer not holding an honorary commission, (3) a Member of the Territorial Force, (4) a camp follower.

6. Describe the legal minimum, composition, the requisite rank of the President, the jurisdiction, and the powers of punishment of—

   (*a*) A District Court-Martial.
   (*b*) A Regimental Court-Martial.

7. State the regulations that govern the rank of President of General, District, and Regimental Courts-Martial.

8. State the regulations as to the rank and service of the President and members of a Court-Martial assembled for the trial of a Commissioned Officer.

9. Why is a Regimental Court-Martial now seldom assembled? By virtue of what authority is such a Court convened, and what are its powers of punishment?

10. How does the position of a Warrant Officer differ from that of a Non-Commissioned Officer in respect of his being tried and punished for an offence by Court-Martial?

11. Can a Regimental Court-Martial try a civil offence?

12 (*a*) What special provisions are laid down with regard to the composition of a General or a District Court-Martial for the trial of a soldier of the Territorial Force?

   (*b*) When may such a Court consist entirely of Officers of the Regular Forces?

CHAPTER IX.

JURISDICTION.

All Officers and soldiers remain subject to the ordinary law, and can be proceeded against in the Civil Courts for offences against that law; if, however, they have already been sentenced by Court-Martial to punishment for the offence, the Civil Court must, in awarding punishment, take into consideration any punishment already suffered. s. 162 (1), (2). If an offender has been convicted or acquitted, by either a Court-Martial or a Civil Court, of any offence, he cannot be tried again by Court-Martial for the same offence. ss. 157, 162 (6). If, however, the first Court-Martial was illegally constituted, or the Proceedings were not confirmed, then there has been in law no previous conviction, and the accused can be tried again. He should not however, usually be tried again, and, if re-tried, the Confirming Officer should see that the sentence of the second Court does not exceed the first sentence, and will use his power of remission to secure this. No Officers who were members of the former Court should serve on the second Court. If, however, the Proceedings have been confirmed and were subsequently quashed by superior authority, the accused cannot be tried again. s. 157 (*note*) A Non-Commissioned Officer who has been convicted by a Civil Court of any offence, though he cannot be tried and reduced by Court-Martial for the same offence, can, however, be reduced by order of the Army Council, or the Commander-in-Chief in India, if the Brigade Commander considers such course advisable. s. 183 (2); K R., 506. If he is only an acting Non-Commissioned Officer, the Commanding Officer can take away his acting rank. s. 183 (*c*).

Under the Army Act the jurisdiction of Courts-Martial with respect to the trial of different offences is unrestricted, and it is not imperative under the Act to try any particular

offence by Court-Martial. **K.R., 547.** If a soldier has been tried by an inferior Court without the authority prescribed by the regulations, the proceedings are not invalidated thereby. **K.R., 551.**

An offender may be tried by Court-Martial at any place within the jurisdiction of an Officer authorized to convene General Courts-Martial, although the offence was not committed at that place, **s. 159,** but he cannot be sentenced to any severer punishment than he was liable to at the place where the offence was committed. **s. 160.**

As a rule the jurisdiction of Civil Courts is local; *i.e.*, the offender must be tried within the jurisdiction where the offence was committed; but a Court of Summary Jurisdiction may try any offence against the Army Act (except those declared to be misdemeanours or indictable offences), either at the place where the offence was committed or where the offender may be at the time of trial. **s. 166 (1).**

No person can be tried by Court-Martial for an offence against the Army Act which was committed more than three years before the date of trial, except the offence is mutiny, desertion, or fraudulent enlistment. If a soldier has served in an exemplary manner for three years, *i.e.*, without an entry in his regimental conduct sheet, **K.R., 489,** he cannot be tried for desertion (other than on active service), or for fraudulent enlistment committed before the commencement of such exemplary service; but if the offence was fraudulent enlistment, all service prior to such enlistment will be forfeited. The Army Council may, however, restore any or all of this service under the conditions stated on p. 30. **s. 161.**

Illustrations.

1. On the 3rd March, 1917, it is discovered that Serjeant A. embezzled £10 in January, 1914. He is not liable to trial.

2. On the 15th April, 1917, it is discovered that Private B. fraudulently enlisted on the 4th January, 1914, thereby obtaining a free kit. He has not been three years clear in his Regimental Conduct Sheet. He is liable to trial for the fraudulent enlistment, but not for obtaining the kit.

3. Private C. is apprehended on the 23rd May, 1917, for having deserted on the 15th September, 1913, when he was deficient of his kit. He can be tried for the desertion, but not for the deficiency of kit.

4. Private D., having caused a mutiny in his company on the 26th October, 1913, escapes from the guard detention-room, and fraudulently enlists into another regiment on the 13th November, 1913. He serves without an entry in his Regimental Conduct Sheet till the 20th June, 1917, when he is recognized by his former Colour-Serjeant. He can be tried for the mutiny, but not for the fraudulent enlistment or desertion.

When a person subject to military law commits an offence, he can be kept in military custody and tried and punished, even though he or his Corps has ceased to be subject to military law. He must, however, be tried within three months of ceasing to be subject, unless the offence was mutiny, desertion, or fraudulent enlistment, in which case he remains liable to trial as just stated. When a soldier has been sentenced by Court-Martial to penal servitude or imprisonment, he still remains liable to the Army Act during the term of his punishment, notwithstanding he has been discharged from the Service, and can be punished accordingly. **s. 158.**

Illustrations.

1. Colour-Serjeant A. is discharged to pension, and immediately afterwards a serious defalcation in his last Pay and Mess Book is discovered. If he can be apprehended he is liable to trial any time within three months from date of discharge.

2. A soldier of a battalion of the Territorial Force is dismissed from annual training, and it is discovered that when employed as mess waiter he stole some mess property; he is liable to trial any time within three months of the date of dismissal.

But notwithstanding the above rules, proceedings under the Reserve Forces Act, 1882, may be taken against a man of the Army Reserve, whether his reserve service has expired or not, at any time within two months after the offence became known to his Commanding Officer; or, if he is not then apprehended, within two months of his apprehension. **R.F. Act, s. 26.**

The same provision is made under the Territorial and Reserve Forces Act, 1907, for the trial of a man of the Territorial Force. **T. & R.F. Act, s. 25 (2).**

A Court of Summary Jurisdiction cannot try any offence against the Army Act if it took place more than six months before the proceedings are commenced.

s. 99 (2) *note*; **Harris, p. 19.**

QUESTION.

1. A soldier, on completion of his service with the Colours, passes into the Army Reserve. To what extent is he still liable to trial and punishment for an offence committed while he was serving with the Regular Forces?

CHAPTER X.

COURT-MARTIAL PROCEDURE.

In this chapter the procedure of the ordinary Courts-Martial will be considered; the variations from this procedure which are adopted in the case of a Field General Court-Martial will be pointed out in Chapter XII.

The proceedings are written on an Army Form, and must be free from erasures and interlineations as far as possible; any such must be verified by the initials of the President, who, unless there is a Judge-Advocate, is responsible for their accuracy, custody, and transmission to the authority prescribed in the order convening the Court. If there is a Judge-Advocate, this responsibility devolves on him. **R.P., 95** (A) and *note 1*, **96, 97.** The members take their seats according to army rank, except in the case of a Regimental Court-Martial, composed entirely of Officers of the same Corps, when they will sit according to their regimental seniority. R.P., 58. The names of the President and members are recorded in the Proceedings in order of seniority.

President: Duties of.

The duties of the President are, to see that the trial is properly conducted, and justice administered, and that the accused does not suffer any disadvantage from his ignorance of procedure, **R.P., 59**; to administer the oath to the members of the Court, **R.P., 26**; to procure any witnesses required, who have not already been summoned by the Convening Officer, **R.P., 78** (A); to put any questions to the witnesses which the Court may ask, **R.P., 85** (A); to close the Court when necessary, **s. 53 (5)**; to collect the votes of the members on any question to be decided by the Court; and if the votes are equal to give a casting vote, as explained below, **s. 53 (8), R.P., 69** (B); to initial any corrections in the Proceedings, **R.P., 95** (A) and *note 1*; to be responsible for their accuracy and safe custody, **R.P., 96**;

to sign the same, and transmit them, as directed, at the end of the trial. **R.P., 45, 50** If there is a Judge-Advocate, some of these duties devolve on him, as stated below.

R.P., 26, 45, 50, 95 (A), and *note* **96, 103** (G).

JUDGE-ADVOCATE.

A Judge-Advocate must be appointed at every General Court-Martial, and may be appointed at a District Court-Martial, but in practice this is seldom done. **R.P., 101** (A). At trials in the United Kingdom, he is appointed by a warrant from the Judge-Advocate-General; before convening the Court, therefore, the Convening Officer will apply to this official to appoint a Judge-Advocate, and will at the same time submit the charge sheet and summary of evidence. Abroad, the warrants issued to Officers, authorizing them to convene General Courts-Martial, give them power also to appoint a Judge-Advocate. **R.P., 17 (A)**, *note* 2; **Man., pp. 722—726.** The Judge-Advocate is not a member of the Court, but merely a legal assessor to advise the Court on points of law, and to act as the ministerial officer of the Court. He is usually an Officer selected for his special knowledge of military law, but he need not necessarily be a person subject to military law. Any grounds which would disqualify an Officer from being a member of the Court, as presently explained, would also disqualify him from acting as Judge-Advocate at that trial. **R.P., 101** (B). If the Judge-Advocate dies, or is incapacitated from attending during the trial, another fit person may be appointed; but the Court cannot go on in the absence of a Judge-Advocate, when one has been appointed. **R.P., 65** (B), **102**

His *duties* are, to advise the Prosecutor, or the accused, on any point of law he may submit; to represent the Judge-Advocate-General; to inform the Court of any defect in the charge, or any irregularity in the proceedings; to remain entirely impartial; to take care the accused suffers no disadvantage through ignorance, **R.P., 103**; to swear the Court and all witnesses, and summon any of the latter not summoned by the Convening Officer, **R.P., 26, 78** (B), **82** (A); to sum up at the conclusion of the case, unless he and the

Court consider it unnecessary, **R.P., 42** (A), **103** (E); to keep the record of the proceedings, and sign and transmit them to the proper authority. **R.P., 45, 50, 95** (A), **96.**

The Court should be guided by any opinion given by the Judge-Advocate on any point of law, and should not overrule it, except for weighty reasons. The Court are responsible for their decisions, but they may incur great risk by disregarding his opinion on any legal point; they may, if they wish, record on the Proceedings that they have decided in consequence of his opinion. **R.P., 103** (F).

Preliminary Proceedings.

The time at which the Court opens is entered on the Proceedings. Courts sit at such hours between 6 a.m. and 6 p.m., as may be ordered; usually between 10 a.m. and 4 p.m, or 11 a.m. and 5 p.m.; they should not be required to sit more than six, or, at most, eight hours in a day, because all parties would become weary. **K.R., 579.** If the Court think it necessary, they may continue their sitting beyond 6 p m., but must enter their reason for doing so on the Proceedings. In cases of necessity, a Court may sit at any hour of the day or night, and on Sunday, Christmas Day, or Good Friday; but only if the Convening Officer certifies that military exigencies require it. **R.P., 64.** Once the accused has been arraigned, the Court should continue the trial from day to day, but they may adjourn from time to time, when necessary, under the Act or Rules of Procedure. **R.P., 65** (A).

The Court must adjourn in the absence of the President or Judge-Advocate, or if reduced below the legal minimum, or if the accused is unable to attend. **s. 53 (1) (2); R.P., 65** (B). They may also adjourn if the number detailed are not present when the Court assembles, **R.P., 18** (B), or to procure the attendance of a witness, **R.P., 79,** or to allow the accused further opportunity of preparing his cross-examination of a witness. **s. 53; R.P., 84** (B).

The Court may also adjourn to view any place, but they must take the Prosecutor and accused with them.

s. 53 (7); R.P., 63 (B)

The order convening the Court is read, is marked so as to identify it, signed by the President, and attached to the Proceedings. **R.P., 22** (A). The order must be free from alterations and erasures as regards the composition of the Court. Where any change in the detail is required a fresh order must be issued. **K.R.. 577**. It may here be remarked that all documents which are intended to form part of the Proceedings must be similarly marked and signed, and, with the exception of the charge sheet, attached at the end of the Proceedings in the order in which they are produced before the Court. The charge sheet is inserted after page B in the Proceedings. If an original document cannot be spared for this purpose, a copy must be compared with the original, and so attached. **K.R., 581 : Man., p. 706.**

The charge sheet and summary of evidence are laid before the Court by the President, to whom they have been sent by the Convening Officer. **R.P., 17** (E).

The Court now satisfy themselves as to their (*a*) legal constitution and (*b*) jurisdiction.

As regards (*a*), they must see that :—

(i.) So far as they can ascertain they have been properly convened.

(ii.) The Court consists of not less than the legal minimum ; and, except as stated below, of not less than the number detailed.

(iii.) Each of the Officers is "eligible," and not "disqualified."

(iv.) The President is of required rank and duly appointed.

(v.) In the case of a General Court-Martial, the Officers are of required rank.

(vi.) If there is a Judge-Advocate, he has been duly appointed, and is not disqualified.

If not satisfied, they must adjourn, and report to the Convening Authority. **R.P., 22.**

If the order appears on the face of it to be in order the Court can accept it. **Man. V., 36.**

If on assembly it is found that the number detailed is not available, the Court should ordinarily adjourn for fresh members to be appointed ; but if they consider it advisable to proceed they may do so, recording their reasons, provided always they are not reduced below the legal minimum..

R.P., 18.

An Officer is not *eligible* to sit on a Court-Martial unless he is subject to military law, and has the required service for the particular description of Court. **R.P., 19 (A), (C).**

An Officer is *disqualified* from sitting on any particular trial if he is :—

(i.) The Prosecutor.
(ii.) A witness for the prosecution.
(iii.) The Convening Officer.
(iv.) The Confirming Officer.
(v.) The accused's Commanding Officer.
(vi.) The Officer who investigated the case.
(vii.) The accused's Squadron or Company Commander who made the preliminary inquiry into the case.
(viii.) The Officer who took the summary of evidence
(ix.) A Member of a Court of Inquiry which investigated the facts of the case.
(x.) Personally interested in the case.

ss. 50 (2), (3), 54 (4) ; R.P., 19 (B).

Even though legally eligible and not disqualified officers should not be detailed as members until competent to fulfil this duty or until they have attended twenty-five times as supernumeraries. **K.R., 572.**

Whenever a Court of Inquiry has been held respecting a matter on which a charge is founded, the President is to enter in red ink and sign a foot-note to the effect that he has compared the names of the Officers who served on the Court of Inquiry with those detailed to serve on the Court.

R.P., App. II., p. 561.

When a new trial has been ordered no Officer should be a member of the Court who was a member of the Court at the previous trial. **R.P., 19 (B) : *note 4*.**

Illustrations.

1. Private A. is for disposal at orderly-room, his Captain, B., inquires into the facts of the case; he is brought up before Major C., who, in the absence of Colonel D., the Commanding Officer, is taking orderly-room that day. He remands him for trial, and the summary of evidence is prepared by the Adjutant, Lieutenant E. Colonel D., Major C., Captain B. and Lieutenant E. are all disqualified from sitting on the Court.
2. Private A. is absent for twenty-one days. Lieutenant B. is a member of the Court of Inquiry held to record his illegal absence. A. is subsequently apprehended and tried for desertion. Lieutenant B. is disqualified from sitting on the Court.
3. Private A. attacks Serjeant B. and injures him seriously. A Court of Inquiry is held to record the circumstances under which Serjeant B. was injured, of which Court, Major C. is President. A. is tried by Court-Martial for striking his superior Officer. Major C. is disqualified from serving on the Court.
4. A mess waiter is tried for stealing a piece of plate belonging to the Officers' Mess; every Officer of that Regiment is disqualified from sitting on the Court.

As regards (*b*) they must see that:—

(i.) The charge appears to be laid against a person subject to military law and to the jurisdiction of the Court.

(ii.) Each charge discloses an offence against the Act and is properly framed.

If not satisfied, they must adjourn and report to the Convening Officer. **R.P., 23.**

PROSECUTOR.

The *Prosecutor* takes his place, and his name is recorded in the Proceedings. He must be subject to military law, and is, in practice, an Officer. **R.P., 24.** He is an Officer of justice, whose duty it is to assist the Court in determining the truth, not to obtain a conviction unfairly; he must act fairly towards the accused, and bring out in evidence any facts that tend in favour of the accused, as well as those against him. It is the duty of the Court to stop him if he refers to any irrelevant matter or indulges in any undue violence of language. **R.P., 60; K.R., 575.** He informs the Court, immediately before the arraignment, if the accused has elected to be tried. It is also his duty to inform the Court if the accused will suffer any additional punishment consequential to the finding besides that awarded by the sentence of the Court; *e.g.*, forfeiture of corps pay. **R.P., 46 (E).** He cannot be objected to by the accused. **R.P., 25 (B).** He can make an opening

address; he examines the witnesses for the prosecution, and cross-examines those for the defence; if the accused does not call witnesses in his defence, the Prosecutor may address the Court a second time for the purpose of summing up; if the accused has called witnesses, he may reply to the accused's case for the defence. He should not, except on active service, give evidence, except to prove a date or other formal matter, or to produce documents. If it is necessary for him to give evidence, he must be sworn and should be the first witness. **R.P., 39** (and *notes*), **40, 41.**

If the accused has not already been present during these preliminary proceedings, he is now brought before the Court. Except during such times as the Court is closed for the consideration of any question, all the proceedings must take place in open Court and in the presence of the accused. **R.P., 63.**

When the Court is open the general public, military or civil, must be admitted, so far as there is accommodation, and no restriction is put on the admission of press reporters. **Man. V., 71.**

Counsel.

Either the Prosecutor or the accused may have *Counsel* to assist him at a General Court-Martial or a District Court-Martial, but abroad, only with the sanction of the Army Council, or Commander-in-Chief in India, or the Convening Authority. **R.P., 88.** At home, Counsel will not be engaged for the prosecution without the sanction of the Army Council, which is only given in exceptionally difficult cases, and very rarely when the offences are purely military. When application is made to the War Office for Counsel a copy of the charge sheet, summary of evidence, and the reasons for wanting Counsel, must accompany the application. **K.R., 574, 574A.** The accused must usually give seven days' notice of his intention to employ Counsel, and similarly seven days' notice must be given to him of the intention to employ Counsel for the prosecution. **R.P., 89** (A). By the term "Counsel" is meant a barrister, advocate, solicitor, or law agent. **R.P. 93** (B). Counsel are bound by the Rules of Procedure,

and if they are guilty of unprofessional conduct can be reported to a Civil Court. **s. 129; R.P., 92.** A Counsel has all the rights and duties of the party for whom he appears. **R.P., 89—91.** The accused may also be assisted by a "friend"; and if this friend be an Officer subject to military law, he has the rights of a Counsel; otherwise he can only advise the accused, but cannot himself address the Court or examine witnesses. **R.P., 87.**

Challenge.

The names of the President and members are now read over in the hearing of the accused, and they severally answer to their names, and the accused is then asked whether he objects to be tried by any of them. **s. 51 (1), (6); R.P., 25 (A).** He cannot object to the whole Court collectively, though he can object to every individual Officer on it. If he objects to the President, the objection against him will first be considered; if to members, other than the President, the objection against the junior member will first be disposed of. **R.P., 25 (E).** The Officer objected to withdraws and takes no part in deciding the objection. **s. 51 (2).** The accused states the grounds of his objection, and may call witnesses in support; but they do not give evidence on oath, as the Court, not being yet sworn, has no power to administer an oath. **R.P., 25 (D).** The Prosecutor can call witnesses to rebut the evidence adduced by the accused. The Court then come to their decision in closed Court. If the objection is to the President, and one-third of the members are in favour of it, it is allowed; if to a member, it is not allowed unless one-half are in favour of it. **s. 51 (3), (5).** If the Court disallow the objection, their decision is communicated to the accused, and the trial proceeds If an objection against the President is allowed, the senior member will adjourn the Court and report to the Convening Officer, who will appoint a fresh President. **s. 51 (4).** If an objection against a member is allowed, and there are waiting members, one of them will be taken. **s. 51 (5); R.P., 25 (G).** If there are no waiting members, and the Court is reduced below the legal minimum, they must adjourn for a fresh member to be detailed, **s. 53 (1)**; otherwise, if not below the

legal minimum, they may go on with the reduced numbers if they think it expedient, as already noted. **R.P., 18 (A).** Whenever a Court adjourns for a fresh President or members to be appointed, the Convening Officer may, if he think fit, convene a fresh Court instead. **R.P., 18 (B).** No new member can be added to a Court once the trial has commenced. The accused must be given an opportunity of challenging any Officers detailed to take the place of those objected to. **s. 51 (4), (5); R.P., 25 (H).**

The Court are then sworn. If there is a Judge-Advocate, he first administers the oath to the President, and then to all the members collectively; if there is no Judge-Advocate, the President first administers the oath to the members collectively, and then one of the members does so to the President. The oath is administered by being read by the person administering it, and by those who are being sworn repeating the words, "So help me, God," and kissing the Testament, which they hold in their ungloved right hand. All stand up while the oath is being administered, all those present in Court, except those on duty under arms, removing their head-dresses. **R.P., 26, 30** *note.*

The obligations undertaken by the Court on being sworn are first, those of a jury, *i.e.*, that they will well and truly try the accused according to the evidence; next, those of a judge, *i.e.*, that they will impartially administer justice according to the Army Act; and lastly, that of secrecy, *i.e.*, that they will not divulge the sentence before confirmation, or the vote of any member at any time unless required by law to do so. **s. 52.**

If there is a Judge-Advocate he is then sworn to secrecy; and if the services of a shorthand writer or interpreter are necessary, these officials are also sworn to do their duty impartially to the best of their power. **R.P., 27.** The accused is given an opportunity of objecting to either of these last two before they are sworn, **R.P., 72 (C)**, but he cannot object to the Judge-Advocate. **R.P., 25 (B).** A party to the trial may apply for the presence of a private interpreter, and ask the Court to hear his version of any disputed interpretation of the evidence. **Man. V., 70.**

Young Officers are required to attend Courts-Martial for the first twelve months after they join the Service, **K.R., 572**; and, if any such are present, they are now sworn to secrecy, as they are allowed to remain in Court when it is closed. **R.P., 27** (B).

If any person who is required to take an oath in connexion with a Court-Martial objects on conscientious grounds to do so, or states that it would have no binding effect on his conscience, then he may be permitted to make a solemn declaration instead. This will have the same effect as taking an oath, and he can be punished for falsehood as though he had sworn falsely. **s. 52 (4)**. In any case, an oath may be administered in such form and with such ceremonies as the person may state will be, according to his religion, binding on him. Abroad, in the case of natives, it will be well to follow the customs adopted in the local Civil Courts. **R.P., 30** (and *note*).

A Court may be sworn to try any number of accused persons then before it, whether they are to be tried separately or jointly, each having the right to challenge any of the Court before they are sworn. If the accused are to be tried separately, the Court will then proceed with one case, and then take the others in succession afterwards. **R.P., 71.** Any number of accused persons may be jointly tried for an offence they are charged with having committed collectively, but any of them can claim separate trial on the ground that the evidence of one or more of the accused about to be tried with him is material to his defence, and if the Convening Officer or the Court is satisfied that this is so, his claim must be allowed. **R.P., 15.** If they are tried together, each will have a separate right of challenge, will make a separate plea and defence, and the finding and sentence must be separately recorded. **R.P., 71** (and *note*).

Arraignment.

The accused is arraigned by each charge in the charge sheet being read over to him, and his pleading to it. **R.P., 31.** It is usual to order the witnesses out of Court at this stage. If the accused has elected to be tried, instead of being dealt with by his Commanding Officer, the

Prosecutor now informs the Court of that fact. **R.P., App. II., p. 682.** The accused, on being called on to plead, may object to any charge on the ground that it does not disclose any offence against the Act or is not properly framed, and the Court will decide whether his objection is valid or not. **R.P., 32.** If there appears to be any mistake in the name or description of the accused, the Court can amend the charge sheet at any time during the trial. If, however, the charge is defective in any other way, the Court must, if they have not begun to examine witnesses, adjourn, for the Convening Officer to make the amendment. If they have begun to examine witnesses, the charge sheet cannot be amended at all; but justice can often be done by a special finding.

R.P., 33.

Illustrations.

Private A. is charged with losing by neglect certain articles of his kit, among others, a pair of socks. but the evidence shows that the socks are not deficient; the Court can find him guilty of the charge, "with the exception of one pair of socks."

Private B. is charged with breaking out of barracks on the 12th August, but the evidence shows he did so on the 13th August; the Court can come to a special finding and correct the date in their finding.

Before pleading to a charge, the accused may offer a "*special plea to the jurisdiction of the Court*"; that is, that they have no power to try him at all on any charge whatever. He may adduce evidence in support of this plea, and the Prosecutor can call evidence in reply. If the Court over-rule his objection, they go on with the trial; if they allow it, they will adjourn and report to the Convening Officer; if in doubt as to whether they should allow it, they may adjourn and refer to the Convening Officer for his advice, or, if this delay would be inconvenient, they may record a special decision, and proceed with the trial, subject to their having jurisdiction. **R.P., 34.** The usual grounds for such a plea would be that the accused was not subject to military law, or not amenable to that description of Court, as, for example, if he were a camp follower and the Court were a Regimental Court-Martial. **s. 184 (2); R.P., 23 (A).**

When called on to plead, he may plead "*guilty*" or "*not guilty.*" Before recording a plea of "*guilty,*" however, the Court must be quite satisfied that the accused

fully understands the meaning and consequences of his plea and the difference in the procedure which it entails. If they are not satisfied on this point, they will proceed with his trial as though he had pleaded "*not guilty*." It must be recorded on the Proceedings that this Rule has been adhered to. If he refuses to plead, or does not plead intelligibly, a plea of "*not guilty*" will be recorded.

R.P., 35.

If, when called upon to plead, the accused appears insane, the Court would take evidence as to his mental condition, and if satisfied that he is unfit to take his trial they would find to this effect (*vide* p. 112) and the President would sign the Proceedings and transmit them for confirmation in the usual way, as explained later on. Meanwhile, until the pleasure of His Majesty, as to the disposal of the accused, is known, he must be kept in confinement so as to keep him securely, but is not to be regarded as a criminal.

s. 130; R.P., 57.

The accused may offer a "*plea in bar of trial*" at the same time as his general plea of "*guilty*" or "*not guilty*." The grounds for such a plea are :—

(i.) That he has been previously acquitted or convicted by a Civil Court or Court-Martial, or dealt with summarily by his Commanding Officer, for the same offence.

ss. 46 (7), 157, 162 (6).

(ii.) That the offence has been pardoned or condoned by competent authority.

(iii.) That more than three years have elapsed since the offence was committed, or, in the case of civil offences in respect of which proceedings must be commenced within any shorter time than three years, that this shorter time has elapsed. **s. 161.**

If the Court allow the plea, they will record their finding and adjourn and report to the Convening Officer ; if they over-rule the plea, they will go on with the trial.

R.P., 36 (c), (f).

To be a bar, the previous trial must have been a legal one, by a properly constituted Court, and for the same offence arising out of the same set of facts.

O'Dowd, pp. 165—167.

Pardon or condonation must be the deliberate act of a person having power to dispose of the offence, acting in his magisterial capacity with a full knowledge of the facts.

O'Dowd, p. 27.

Illustrations.

1. Private A. is convicted of desertion, but the Proceedings are not confirmed; he can be tried again on the same charge. **s. 54 (6).**
2. Private B. is acquitted on a charge of murdering a comrade; he cannot be tried again for the manslaughter of the same man. **Harris, p. 404.**
3. Private C. is charged on the 6th November, 1913, with attempting, on the 13th July, 1913, to have carnal knowledge of a girl of 15 years of age, and pleads in bar of trial that more than three months have elapsed since the offence is alleged to have taken place. His plea must be allowed.

48 & 49 Vict., c. 69, s. 5.

If there are separate charge sheets, the accused will be arraigned, and the trial proceed separately on each charge sheet up to the finding inclusive. The trials on the several charge sheets will be in such order as the Convening Officer directs. If the Convening Officer thinks fit, he can direct that on the accused being convicted of any charge in any charge sheet, he need not be tried on the other charge sheet or sheets, and the Court will then finish the trial as though there were no other charge sheets. Whenever a charge sheet contains more than one charge, the accused can claim to be tried separately on each charge, on the grounds that he would otherwise be embarrassed in his defence, and if the Court think the claim good they should allow it and proceed accordingly. **R.P., 62.**

When the accused pleads "*guilty*" to some charges and "*not guilty*" to others, in the same charge sheet, the Court will first proceed with the trial of those charges to which he has pleaded "*not guilty.*" If, however, they are *alternative charges*, the Court can enter a plea of "*not guilty*" to those to which he has not pleaded "*guilty*"; or if they think he has pleaded "*guilty*" to the less serious of the alternative charges to avoid the punishment entailed by the graver, they may proceed as though he had not pleaded "*guilty*" to any. **R.P., 37 (A).**

Illustrations.

1. Private A. is charged with (1) stealing certain property; (2) receiving the same knowing it to have been stolen. He pleads "*guilty*" to the first charge; the Court can enter a plea of "*not guilty*" to the second, and proceed as on a plea of "*guilty*."
2. Colour-Serjeant B. is charged with (1) embezzling certain public money; (2) neglect, to the prejudice of military discipline, in keeping his accounts so negligently that the money had been lost. He pleads "*not guilty*" to the first, and "*guilty*" to the second charge. The Court can proceed as though he had pleaded "*not guilty*" to both.

The accused may at any time withdraw a plea of "*not guilty*" and plead "*guilty*," and if the Court, as already noted, are satisfied he understands what he is doing, they may record the plea and proceed with the remainder of the trial accordingly. **R.P., 38.**

(A) Proceedings on Plea of "Not Guilty."

Prosecution.

The Prosecutor may, if he wishes, make an opening address, or may hand in a written address. If Counsel has been retained for the prosecution, he should make an opening address. **R.P., 39 (A), 90.**

It may here be generally noted that wherever in the Proceedings any addresses are made, they may be either oral or written. When the address is oral, only so much of it as the Court think necessary need be recorded, provided that such a record of anything said for the defence must be kept as will enable the Confirming Officer to judge of the defence, and whenever the Prosecutor or the accused requests that any particular matter in his address be recorded, the Court should enter it in the Proceedings. Whenever the address is written, it will be read, marked with some identifying mark, signed by the President, and attached to the Proceedings. **R.P., 95 (D), App. II., p. 679.**

The witnesses for the Prosecution are then called, sworn, and examined by the Prosecutor. **R.P., 39.**

Military witnesses are ordered to attend by their Commanding Officer; the attendance of civilians is secured by a summons, which is served on them by the Police. This summons is signed either by the Convening Officer, Judge-Advocate, President, or the Commanding Officer of the accused. For form *vide* R.P., App II., p. 699.

s. 125 (1); R.P. 78.

Every witness (including one producing documents) must be sworn by one of the Court, or the Judge-Advocate when there is one; or he may make a solemn declaration under the circumstances before noted. **s. 52 (3); R.P., 30, 82** (A); **Man., p. 705.** If a witness refuses to be sworn, or to answer questions or produce documents, which he can legally be required to answer or produce, he may, if subject to military law, be arrested, in order to be proceeded against under s. 28, and if a civilian, his offence can be certified, by the President, to a Civil Court, who will deal with the contempt as though it had taken place before that Court. **s. 126 (1)** (and *note 3*). The evidence of all witnesses is taken down in a narrative form, as nearly as possible in the words used; but wherever the Prosecutor, accused, Judge-Advocate, or the Court think it material, the exact question and answer are to be recorded *verbatim*. **R.P., 95** (B). If any objection is made to any evidence, the Court may, if they think fit, record the proposed evidence, and the fact that it had been objected to, and their decision upon the objection. **R.P., 95** (C). When the examination-in-chief is ended, the accused can cross-examine the witness, who, if necessary, may be re-examined by the Prosecutor. **R.P., 84** (A). Details as to the method of conducting these various examinations of witnesses will be dealt with in a subsequent Chapter on "Evidence." (*vide* p. 155 *et seq.*) Any member of the Court or the Judge-Advocate may, with the permission of the Court, ask any witness any questions; such questions should usually be put after the parties to the trial have finished the examination or cross-examination of the witness. **R.P., 85** (A). These questions may be put at any time before the second address of the accused, and a witness may be recalled at the request of either party for this purpose, and will be examined on his former oath. The Court may, if they think fit in the interests of justice, call or re-call any witness at any time before the finding. **R.P., 86.** Every question may be put direct to the witness by the person asking it. The evidence of each witness is read to him at the conclusion of his examination, to see that it has been recorded correctly and to give him an opportunity of correcting slips. It should be recorded on the Proceedings that this has been done. **R.P., 83.**

The witness will then withdraw, as, except the Prosecutor and the accused, no other witness should be in Court while another witness is under examination. **R.P., 81.**

The examination of all the witnesses for the Prosecution is conducted in a similar manner. The Prosecutor is not bound to call all the witnesses whose evidence is in the summary, but he should call any whom the accused wants called, in order to give him an opportunity of cross-examining them. **R.P., 75.** If he wishes to call a witness whose name is not in the summary, he must give reasonable notice to the accused of his intention, or the Court may allow an adjournment to enable the accused to prepare his cross-examination. **R.P., 76.**

After the assembly of the Court, the President is the person to procure the attendance of any witnesses who may be required. **R.P., 78.**

Defence.

At the close of the Prosecution, the accused will be called upon for his defence, and will be informed of his right to give evidence himself, subject to cross-examination, and will be asked whether he wishes to call any witnesses for his defence. The subsequent procedure will vary according to his replies to these questions. The different cases will now be considered in turn. **R.P., 40.**

(i.) *The Accused calls Witnesses in Defence.*

The accused can make an opening address; and the rules already noted for the opening address for the Prosecution apply, except that the accused is allowed more latitude in his remarks than would be permissible to the Prosecutor. If, however, he makes groundless charges against the witnesses or other innocent parties he can be tried for making false accusations; but such a course would be very exceptional. The Court should caution him if his defence is irrelevant. **R.P., 60** (c) and *note*; **Man. V., 82.** He may then give evidence himself, if he wishes, and call his other witnesses in turn. The rules for the conduct of the examination of witnesses for the Prosecution apply to those for the Defence, except, of course, they are examined by the accused

and cross-examined by the Prosecutor. If the accused wishes to give evidence himself he should usually, but need not necessarily, do so first, before he has heard the other witnesses give their evidence. Unless the Court decides that there are reasons against it (such as his violent conduct) the accused, while giving evidence, will do so from the place where the witnesses stand. **R.P., 80 (2).** After all the evidence for the defence has been taken, the accused can make a second address, summing up his case; and, lastly, the Prosecutor is entitled to make a second address, replying to the whole case. **R.P., 41** (and *notes*).

(ii.) *The accused gives evidence himself, but calls no other witnesses (except as to character).*

The accused will give his evidence as above described. The Prosecutor can then make a second address, summing up the evidence for the Prosecution and commenting on the accused's evidence. The accused may then make an address in his defence. He may also call any witnesses as to character. **R.P., 40** (and *note 5*). The Prosecutor may rebut this evidence as to character by producing proof of previous convictions, or the accused's Conduct Sheet, and may call witnesses to prove such, but he cannot again address the Court. **R.P., 86** (c).

(iii.) *The accused calls no witnesses (except as to character).*

The Prosecutor will make his address (if any) at once; but he must not comment on the fact of the accused declining to give evidence. The accused can then make an address in his defence and call any witnesses as to character as in the last case, and the Prosecutor has the same right of rebutting any such evidence. **R.P., 40** (and *note 5*).

If the accused is assisted by Counsel, or an Officer having the rights of Counsel, and does not wish to give evidence himself, but wishes to give his own account of what happened, he will do so at the close of the prosecution, and before any address made by such Counsel. His address, like all others, can be oral or written, but he is not sworn, and no question may be put to him by the Court or any other person. If he makes such a statement, the procedure will be the same as in (i.) above. **R.P., 94.**

At the conclusion of the whole case, the Judge-Advocate, if there is one, will sum up, unless he and the Court agree that a summing up is unnecessary, which decision must be entered on the Proceedings. **R.P., 42** (A), **103** (E). After this, no other address will be allowed, and the Court will be closed to consider their finding. **R.P., 42** (B), **43** (A).

Finding.

Each member must give his opinion on each charge, commencing with the junior. **R.P., 43** (B), **69.** A majority of the Court decides, but if the votes are equal, the accused is given the benefit of the doubt, and acquitted. **s. 53 (8).** If this acquittal relates to all the charges in a charge sheet, the President dates and signs the Proceedings, and the accused is brought in, and the finding read to him in open Court, and he is released at once. **R.P., 45.**

The finding will be recorded as a finding of "*Guilty*," "*Not Guilty*," or "*Not Guilty and honourably acquit him of the same.*" This last formula, however, should only be used when the offence charged against the accused is disgraceful and such as to tarnish his reputation, and when the accused has come through the ordeal of the trial without the least stain on his character. **R.P., 44** (A), and *note 1.*

The Court may also record a "Special Finding." The most usual cases for this are—(1) when they find the facts proved in evidence differ from the particulars in the charge, but that the difference is not so material as to have prejudiced the accused in his defence; (2) under the provisions of s. 56 of the Army Act, which allows a Court to find a person, charged with certain offences, guilty of other cognate offences therein named; (3) when there are alternative charges, and the Court are in doubt as to which charge the facts proved amount to, they may refer to the Confirming Authority for an opinion, or, if this is impossible, may come to a finding of facts and declare the accused guilty of whichever charge these facts in law constitute; (4) they may find the accused guilty, but insane at the time he committed the offence; (5) they may find that by reason of insanity the accused is unfit to take his trial.

ss. 56, 130; **R.P., 44** (and *notes*), **57** (A).

Illustrations.

1. Private A. is charged with selling his tunic, two shirts, and a towel. There is no evidence to show that he sold the towel. The Court can find him "Guilty of the charge with the exception of one towel."

2. Private B. is charged with striking Serjeant C. with a poker. The evidence shows that he struck him, but the instrument was a stick and not a poker. The Court can find him "Guilty of the charge, with the exception that he struck Serjeant C. with a stick and not a poker."

3. Corporal D. is charged with desertion. He calls evidence to show that he stopped away to nurse a sick wife, and that as soon as she was better he returned and surrendered himself. The Court can find him "Guilty of absence without leave."

4. Serjeant E. is charged with wilfully allowing a soldier in arrest to escape. The evidence shows that the escape was due to the Serjeant forgetting to lock the door of the detention room. The Court can find him "Guilty of negligently allowing a soldier in arrest to escape."

5. Private F. is charged with pawning certain articles of his kit. There is no evidence in proof of the pawning, but only of the fact of the deficiency. The Court can *not* find him "Guilty of losing, by neglect, these articles."

6. Private G. is charged with, 1st, stealing goods the property of a comrade; 2nd, receiving the same knowing them to have been stolen. The evidence proves certain facts as to the accused being in possession of the articles soon after they were missed, but the Court are in doubt as to whether these facts legally amount to theft or receiving stolen goods. They can come to a finding of facts, stating "that the accused did *so and so*, but are in doubt whether these facts constitute, in law, the first charge, or second charge, and therefore, they find him guilty of whichever charge these facts amount to."

(B) Proceedings on Plea of "Guilty."

The Court will find the accused "*Guilty*" and will record the finding in the Proceedings. As has already been noted, before accepting the accused's plea of "*Guilty*," the Court must be quite satisfied that he fully understands the nature of such plea. If the trial has proceeded on other charges on the same charge sheet, to which he has pleaded "*Not Guilty*," those charges to which he has already pleaded "*Guilty*" will be read to him again on the Court being re-opened. **R.P., 35 (B).**

The summary of evidence will then be read, marked, and signed by the President, and attached to the Proceedings. If there is no summary, sufficient evidence will be taken to enable the Court to determine their sentence and to allow the Confirming Officer to know the circumstances under which the offence was committed. The accused may then make any statement he wishes in mitigation of punishment, and, if necessary, the Court may allow him to call witnesses

in support of his statement. He can also call witnesses as to character. If, from the statement of the accused, or the summary, it appears that after all he did not understand the nature of his plea of "*Guilty*," the Court must alter the record and proceed as though he had pleaded "*Not Guilty*."

R.P., 37 (b).

Proceedings on Conviction.

In any case, where the Court has convicted the accused of any charge, whether in consequence of his plea of "*Guilty*," or after a plea of "*Not Guilty*," they will, before determining their sentence, take evidence as to his previous character and service. This evidence is usually given by an Officer, generally the Prosecutor, handing in the "Statement as to character and service of the accused," referred to in Chapter VII. The witness producing this Statement must, of course, be sworn, and he must identify the accused as the person named in the Statement, and declare that he has compared the statements with the Regimental books and found them true extracts. The accused can cross-examine this witness, and can call for the books to be produced, and can call witnesses to rebut the evidence thus given against him, and after all this evidence is finished can address the Court thereon.

R.P., 46.

If the finding of the Court renders the accused liable to any exceptional punishment in addition to that awarded by the Court, the Prosecutor must call attention to this fact, and the Court must enquire into the nature and amount of such extra punishment.

When any offence is unusually prevalent attention should be periodically called to the fact in District or Garrison Orders, and not by special directions to Courts-Martial.

R.P. App. II., p. 695.

Sentence.

The Court will now be closed to consider their sentence. Every member must give his vote for the sentence, even though he had been individually in favour of an acquittal. The sentence must be determined by a majority of the

Court, except that sentence of death cannot be passed unless two thirds at least of the members are in favour of it. **s. 48 (8).** When the opinions of the members as to the *nature* of the punishment differ, and various punishments are suggested, the most lenient punishment named must be put to the vote first, and, unless a majority of the Court are in favour of that, then the next most lenient, and so on till some one punishment has been determined by a majority. Similarly, if opinions differ as to the *amount* of the punishment to be awarded, a similar course will be adopted; in each case the voting will begin with the junior member. **R.P., 69.**

Illustrations.

1. On a General Court-Martial, consisting of nine members, four vote for death, three for penal servitude, and two for imprisonment. The imprisonment will now be first put to the vote and will be negatived, only two voting for it. Now the penal servitude will be put; naturally, those members who wished to only give imprisonment will vote for it rather than for death, hence five will now vote for it, and, this being an absolute majority of the Court, penal servitude will be the punishment awarded.
2. In fixing the amount, four members vote for ten years, one for seven years two for five years, and two for three years. The three years will first be put to the vote and will be lost, only two being in favour of this amount; next, five years will be put, and as this will only obtain four votes, this will be negatived; next, seven years will be put, and, as five members will now be in favour of this amount, this will be the award.

In determining their sentence, the Court should consider the nature of the offence, and the service and previous character of the accused, and must bear in mind any aggravating or extenuating circumstances, and the prevalence of any particular crime in any Garrison or Corps; they must also have regard to the climate and locality where the accused will have to undergo his sentence, and to any consequences involved by their finding or sentence, in addition to the punishment awarded by them. Care must be taken to discriminate between offences due to youth or temper and those showing premeditated misconduct. If it is considered necessary to award a sentence of imprisonment, discharge with ignominy should be added. The K.R., para. 583, give rules as to the amount of detention or imprisonment which should usually be awarded for the various offences therein named, and Courts-Martial should not depart from these amounts without good reason. **K.R., 583.** ~~In framing sentences the following rules must be observed:—~~

(1) Terms of imprisonment or detention, not amounting to six months, will be awarded in *days*.

(2) Terms of one year or two years will be awarded in *years*.

(3) All other terms will be awarded in *months* or *months and days*. **K.R., 585.**

The word "month" in a sentence of imprisonment, detention, or field punishment, is interpreted as a "calendar month." **R.P., 134** (c).

A Court will not sentence a soldier to forfeitures when he is *convicted* of desertion, fraudulent enlistment, or an offence under s. 17 or 18; or when he is *sentenced* to penal servitude or discharge with ignominy; as in such cases the forfeitures are absolute under the provisions of the Royal Warrant in consequence of the conviction or sentence.

R.W., 1096, 1098, 1115, 1137 (*a*), (*b*), (*c*), **1236**; **Man., p. 697** (*note*).

The forfeitures which a soldier suffers *as a consequence* of his conviction or sentence, without any award by the Court, may be summarized as follows:—

(i.) Service towards discharge—when convicted of desertion or fraudulent enlistment, or when trial for these offences is dispensed with. **s. 79 (2).**

(ii.) Qualifying service, *i.e.*, service towards pension—when convicted of desertion or fraudulent enlistment, or when sentenced to ~~penal servitude or~~ discharge with ignominy. **R.W., 1137** (*a*), (*b*), (*c*).

(iii.) Medals and decorations—when convicted of desertion or fraudulent enlistment, or an offence under s. 17 or 18; or when sentenced by Court Martial to ~~penal servitude or~~ discharge with ignominy; or by a Civil Court to more than six months' imprisonment. **R.W., 1236.** If he has the V.C. or M.C. special reference is made to the King as to forfeiture. **K.R., 1746; A.O., 12.**

(iv.) Good conduct badges.—*One* for every conviction by Court-Martial or a Civil Court; *all*, when convicted of desertion or fraudulent enlistment

or an offence under s. 18; or when sentenced to ~~penal servitude~~, discharge with ignominy, or more than six months' imprisonment (by either Court-Martial or Civil Court).

R.W., 1094, 1096–1098.

In awarding stoppages, a Court must take care not to sentence the accused to any greater deduction than will make good the loss or damage occasioned by his offence. s. 138 (*b*). In cases of fraudulent enlistment, if the accused is charged with obtaining a kit to which he was not entitled, the Court will sentence him to pay the value; in cases of deficiency of kit the Court will only sentence him to stoppages for those articles which are Government property, which should have the values stated in the charge.

K.R., 561, 563—565.

If a Court recommend an accused to mercy or for the restoration of any service necessarily forfeited on conviction of desertion or fraudulent enlistment, they must give their reasons for such recommendation, and may, if they think fit, enter in the Proceedings the number of votes by which any such recommendation was lost or carried. s. 79; R.P., 49.

As a Court has an absolute discretion as to the sentence, except on conviction on a charge under s. 16, a recommendation to mercy is seldom necessary, but might be required where a serious offence has been committed; and though the Court consider a severe sentence necessary to mark their sense of its gravity, they think that owing to the offender's previous good character or for other exceptional reasons he should not suffer the full penalty. Man. V., 88.

The Proceedings will then be dated and signed by the President, and by the Judge-Advocate (if any), and transmitted to the Confirming Authority as directed in the order convening the Court. R.P., 50. In the United Kingdom the Proceedings of General Courts-Martial are to be sent direct to the Convening Officer, who will forward them with his remarks to the Judge-Advocate General. If the sentence requires confirmation by the King, the Judge-Advocate General will send the Proceedings to the Secretary of State for His Majesty's confirmation. In other cases the Judge-Advocate General will, after reviewing the Proceedings, return them to the Confirming Officer for necessary action.

A.O., 110.

QUESTIONS.

1. What are the duties of the President of a Court-Martial in respect of (1) examining the charge sheet, (2) the summary of evidence, (3) summoning witnesses, (4) transmitting the proceedings ?

2. By whom, and under what circumstances, is a Judge-Advocate appointed to a Court-Martial ? In the event of a Judge-Advocate being appointed, is he obliged to be present during the whole of the trial ?

3. On the assembly of a Court-Martial, "the Court satisfy themselves, as provided by R.P., 22 and 23." Explain the meaning of this.

4. In order to sit as a member of a Court-Martial, an Officer must be *eligible* and *not disqualified*. Explain the meaning of these terms.

5. Describe the position and duties of the Prosecutor. Under what circumstances can he be called upon to give evidence as a witness ?

6. At what stage in the proceedings is the accused first formally brought before the Court ? Describe the subsequent procedure of the Court up to the arraignment of the accused.

7. The accused is in doubt as to whether he shall employ Counsel to appear on his behalf, or whether it would be better that Counsel should assist him as a friend. Explain the difference between the two cases

8. The accused objects to be tried by the President of a Court-Martial. Describe the procedure of the Court on the assumption that the objection raised is a reasonable one.

9. Describe the manner in which the President and members of a Court-Martial are sworn. Point out the various obligations undertaken by members who take the oath.

10. The Proceedings of Courts-Martial are framed for trying accused persons separately. What difference arises when several persons are tried together for an offence committed by them collectively ?

11. What is meant by the arraignment of the accused? State the regulations that ensure that an accused person has sufficient time before his arraignment to prepare his defence.

12. The accused has elected to be tried by District Court Martial instead of submitting to the summary award of his Commanding Officer. How would the fact that the accused had elected to be tried be brought to the knowledge of the members of the Court-Martial, and to what extent should the knowledge of the fact influence their dealing with the offence?

13. What is the object of using separate charge sheets? What difference arises in the procedure of a Court-Martial if the charges against the accused are placed on separate charge sheets instead of being embodied in one charge sheet?

14. After the commencement of a trial, a defect is found in the charge sheet. Describe how defects of different kinds can be dealt with.

15 To what extent can a defective charge sheet be amended (after the examination of witnesses has commenced)? What is the object of using separate charge sheets, and how is the ordinary procedure of a Court affected by entering charges on separate charge sheets?

16. An accused, on being brought before a Court-Martial, objects to a member of the Court on the ground that he is an Officer of the Company to which the accused belongs. How would the Court deal with the case?

17. The accused before pleading directly to a charge, may offer a "special plea" to the jurisdiction of the Court, or may "object" to the charge. To what matters would the above plea and objection refer?

18. On what grounds may the accused offer a "plea in bar of trial"? At what stage in the proceedings would such a plea be brought forward?

19. Describe the procedure at a Court-Martial when the accused pleads "Guilty" to all the charges made against him.

20. The accused is being tried on alternative charges. Point out the course to be pursued by the Court if the accused (1) pleads guilty to both charges, and (2) subsequently pleads guilty to the lesser of the two charges.

21. An accused arraigned on two charges (not alternative), pleads "Guilty" to one and "Not guilty" to the other. Describe the general procedure of the Court in dealing with such pleas.

22. Explain how the evidence to be given by a witness is elicited. How is the accuracy of the evidence taken down insured?

23. A witness, after giving his evidence, retires from the Court. Describe the circumstances under which he may be recalled to give further evidence.

24. Enumerate the several cases in which an accused charged with an offence may be found guilty of another offence of a cognate character.

25. How is the finding of a Court-Martial decided? State in general terms the subsequent procedure when (1) the accused is acquitted of all the charges, (2) acquitted of some of the charges and found guilty of others.

26. Under what circumstances would a Court-Martial be justified in passing a "special" finding?

27. How is the finding and sentence of a Court-Martial decided? When has the President a casting vote?

28. During a Court-Martial the following events take place:

    (1) The President is taken ill.
    (2) A member is taken ill.
    (3) The accused is taken ill.
    (4) The Court find that the accused was insane when he committed the offence charged.

    Describe the procedure to be adopted in each case considered separately.

29. Give a brief explanatory answer to the following questions :—

(*a*) Can the Prosecutor give evidence as a witness either for the prosecution or the defence?

(*b*) Can the Prosecutor comment on the fact of the accused either giving evidence himself, or not giving it?

(*c*) Can a private soldier, called as a witness, refuse to answer a question put to him?

(*d*) Can a Court-Martial award a sentence of imprisonment or detention to a soldier who is undergoing a previous sentence of the same character?

30 In the event of the members of a Court-Martial being equally divided in opinion on (1) their finding, (2) their sentence, what would be done? May a member who votes for the acquittal of a prisoner decline to vote on the sentence in the event of the accused being found guilty by a majority of the Court?

31. State the regulations as to the terms in which a Court-Martial should express an award of imprisonment. Write out a sentence of imprisonment that would be applicable to a Non-Commissioned Officer found guilty of a serious offence.

32. What are the considerations that should influence a Court-Martial in deciding as to whether they should pass a sentence of imprisonment or one of detention? Write out the form of sentence in each case.

33. Under what circumstances would it be necessary to dissolve a Court-Martial after the trial has commenced? How would the dissolution of the Court affect a subsequent trial of the accused?

34. Comment on the following incidents that may arise during a trial :—

(1) The Judge-Advocate is absent.

(2) The Prosecutor is absent.

(3) The Court are equally divided in opinion as to (a) the finding, (b) the sentence.

35. The accused before a Court-Martial has pleaded "Not guilty," but has been convicted of the charges against him. Describe in full detail, as set forth in the Appendix II. Rules of Procedure, what takes place from the time the finding is recorded up to the closing of the Court to deliberate on its sentence. Specify the chief items of information furnished to the Court during this part of the procedure.

36. State the regulations to be observed by a Court-Martial in awarding imprisonment to (1) an Officer, (2) a Non-Commissioned Officer, (3) a soldier who is already under sentence of imprisonment.

37. The members of a Court-Martial differ in opinion as to (1) the nature, (2), the amount, of the punishment to be awarded. How is the matter settled?

38. A Court-Martial is closed to consider its sentence. Two members desire to award three months' imprisonment, two others four, another six, and the other four members two months' imprisonment. How is the ultimate sentence arrived at?

39. Under what circumstances would a sentence of imprisonment be awarded in days, months, years, months and days?

40. A witness is summoned to give evidence before a Court-Martial. Describe, in full detail, how his evidence is taken and recorded.

41. Who is the Prosecutor? Who appoints him? Can he be called on to give evidence as a witness? Can he comment on the fact that the accused has given evidence, or has not given evidence?

42. Describe the procedure at a Court-Martial in each of the following cases considered separately:—The accused challenges (1) the President, (2) a Member, (3) the Prosecutor.

43. Give a brief description of the oath taken by the members of a Court-Martial, and the oath taken by a witness before giving evidence.

44. The accused may employ Counsel, or a friend, to assist him in his defence. How does the presence of these persons affect the position of the accused?

45. Describe the procedure at a Court-Martial where the members are equally divided in opinion on points that arise in connexion with—

(1) The challenge of a member.
(2) The admissibility of certain evidence.
(3) The finding.
(4) The amount of imprisonment to be awarded.

46. What is meant by a casting vote? When may it be used, and when may it not be used, in deciding questions that arise during a Court-Martial?

47. Describe the procedure of a Court-Martial in the following cases (considered separately):—

(1) The votes on the sentence are equally divided.
(2) The Court find that the accused is insane.
(3) A witness insults the Court.

48. You are acting as Prosecutor at a Court-Martial held for the trial of a soldier of your unit; you call a witness whose evidence is not contained in the summary or abstract of evidence given to the accused, and no notice has been given to the accused of the intention to call the witness.

What procedure is to be adopted by the Court in such a case?

49. If a member of a District Court-Martial leaves the Court while part of the evidence against an accused person is taken—

(*a*) What would be the result as regards the member of the Court above referred to?

and

(*b*) What procedure should the Court adopt in such circumstances if it consisted of—

(i.) Five members?
(ii.) Three members?

50. At a Regimental Court-Martial held for the trial of a Special Reservist, the accused, before pleading to the charge preferred against him, offered a special plea to the general jurisdiction of the Court. Explain the meaning of such a plea. Give an example of a valid plea of this nature, and state what action the Court should take if they consider anything stated in the plea shows that the Court have not jurisdiction.

CHAPTER XI.

CONFIRMATION; AND EXECUTION OF SENTENCES.

All findings and sentences of Courts-Martial, except a finding of acquittal, require confirmation by the Officer having power to confirm the Proceedings of such Court, and until so confirmed are of no effect. **s. 54 (3), (6).** The authorities having power to confirm the different descriptions of Courts-Martial have already been stated in Chapter VIII. The minute of confirmation should be in the handwriting of the Confirming Authority.

Clode, Mil. Law, p. 168.

No Officer can confirm the Proceedings of a Court-Martial of which he was a member, and if he should become the Confirming Officer, he must refer them to a superior Officer having authority to confirm the Proceedings of such a Court; or in a Colony, where there is no such superior Officer, to the Governor, who in such a case can confirm the Proceedings. **s. 54 (4).**

(i.) Revision.

A Confirming Officer can send back the finding, or sentence, or both, for revision once, but only once. **s. 54 (2); R.P., 51 (B).** In this case, the Court reassembles, pursuant to the order, and, if possible, all the original members must be present. If the President is absent or the Court is reduced below the legal minimum, there can be no revision; and the Court must adjourn and report to the Confirming Officer. The proceedings are conducted in closed Court, and the Court cannot take any fresh evidence. If the sentence, only, is sent back for revision, they cannot alter the finding; if the finding is revised, and the new finding requires a sentence, the Court must pass sentence

afresh, even though in the words of the former sentence, as the revocation of the finding, *ipso facto*, revokes the sentence, and unless the Court pass a fresh sentence the accused will have no sentence to undergo. The Court can, if they think right, adhere to their former finding or sentence. **R.P., 52; App. II. p. 698.** The sentence cannot be increased on revision, though it can, of course, be reduced; but where the first sentence was a nullity, it is not an increase to pass a valid sentence on revision. **s. 54 (2).**

A finding of "*not guilty*" cannot be revised, even if the finding of "*guilty*" on an alternative charge is not confirmed. **s. 54 (3) *note* 6.**

Illustrations.

1. A Court having found a Corporal "*guilty*" of two charges and sentenced him "to be reduced to the ranks"; the Confirming Officer sends the finding back for revision, on the ground that there is not sufficient evidence to convict on the second charge. The Court, on revision, being of this opinion, "revoke their former finding and find him '*guilty*' on the first charge, '*not guilty*' of the second charge." They must now pass a fresh sentence, which must not be more than the first one.
2. A Court having sentenced a Serjeant to be reduced to the rank of Lance-Serjeant; the sentence is sent back for revision as being a nullity (there being no such rank); the Court can now sentence the prisoner to be reduced to the ranks and imprisonment, as this is not an increase of a *former* sentence, there having been no legal sentence at all in the first instance.
3. A Court having sentenced a Corporal to be reduced to the rank of Lance-Corporal and to be fined one pound, the sentence is sent back for revision, part of it being a nullity; the Court now cannot add anything to the former sentence, which was partly legal, *i.e.*, the fine; hence, the fresh sentence cannot be more than a fine of one pound, as a sentence of reduction to the ranks would be an increase of the first one.
4. A private soldier is arraigned on two alternative charges; first charge, stealing goods the property of a comrade; second charge, receiving the same goods, knowing them to have been stolen. The Court find him "*guilty*," of the first charge, and "*not guilty*" of the second. The Confirming Authority refuses confirmation on the first charge; the accused cannot now be found "*guilty*" of the second charge.

If the accused has made statements in mitigation of punishment which might influence the Confirming Officer as to the sentence, he should if possible (unless such a course will cause substantial delay), make inquiry as to the truth of the statements before confirming the Proceedings. **K.R., 589.**

If the Confirming Officer wishes to comment on the Proceedings, his remarks will not form part of the Proceedings but will be made in a separate minute to the

Court, or in exceptional cases published in Command Orders. He cannot comment on the inadequacy of the sentence, and must be careful not to interfere unduly with the judicial discretion of the Court. In the case of a finding of acquittal which requires no confirmation, the Officer, who would otherwise have confirmed, cannot make any remarks on the Proceedings, but if he thinks anything in the case requires notice, he must make a separate report to the Army Council. In no case can he comment on a finding of "*not guilty.*" **R P., 51 (A); K.R., 589, 590.**

(ii.) Remission, etc.

When confirming the Proceedings, either original or revised, the Confirming Officer can mitigate, remit, or commute any or all of the sentence, or may suspend the execution of the same for such time as may seem expedient.

s. 57 (1).

Mitigation is the awarding a less amount of the same species of punishment; as by reducing the length of a sentence of imprisonment, and is really a partial remission.

Remission may be of the whole or part of the sentence; as where a sentence of imprisonment with hard labour is entirely remitted, or the term shortened, or the hard labour remitted.

Commutation is changing one kind of punishment for another lower in the scale laid down in s. 44; *e.g.*, penal servitude for death, or imprisonment for penal servitude, or in certain cases laid down in s. 83 (7), commuting imprisonment into transfer for general service. If a soldier has been sentenced to imprisonment and discharge with ignominy, and the Confirming Officer commutes the imprisonment to detention, he must remit the discharge with ignominy, as a sentence of discharge cannot accompany one of detention. If a soldier has been sentenced to imprisonment, without discharge with ignominy, for a purely military offence, he should, except under very special circumstances, commute the imprisonment to detention. A sentence of cashiering in the case of an Officer convicted under s. 16 cannot be commuted, as no other punishment could be awarded.

ss. 44 (4), 57 (1) and *notes*; K.R., 583.

The Confirming Officer may also refuse confirmation, in which case the proceedings are annulled, and the accused can be tried again; or he may refer the Proceedings to superior authority for confirmation. s. 54 (5); R.P., 51 (B). If the sentence is informally expressed, the Confirming Officer can vary the form, and if it is in excess of that allowed by law, he can reduce it to what is legal and can then confirm the sentence so altered; but he cannot vary an altogether illegal sentence in this way. R.P. 56 (A).

Illustrations.

1. A sentence of "one year and three months' imprisonment" can be varied to "fifteen months' imprisonment."
2. A sentence of "reduction to the rank of Lance-Serjeant" is altogether illegal, and cannot be varied.
3. A sentence of "fourteen days' confinement to barracks" is illegal, and cannot be varied.

(iii.) Approval by Civil Governors.

In certain cases the sentence must be approved by the Civil Authority, in addition to the usual confirmation by the Military Authority. In India, sentence of death for treason or murder (except on active service), or of penal servitude for a civil offence, must be approved by the Governor-General, and, in a Colony, sentence of death for any offence (except on active service), and of penal servitude for a civil offence, requires approval by the Governor of the Colony.

s. 54 (7), (8), (9).

(iv.) Promulgation.

The Proceedings of all Courts-Martial (except when the accused has been acquitted of all the charges) are to be promulgated in such manner as the Confirming Officer directs, or according to the custom of the Service. R.P., 53. They are usually read out on parade, but in any case the charge, finding, recommendation to mercy (if any), sentence and minute of confirmation must be communicated to the accused. s. 53 (9). When the Proceedings have not been confirmed they must, nevertheless, be promulgated. The date of promulgation is entered on the Proceedings.

K.R. 593; R.P., App. II. p. 699.

After promulgation the Confirming Officer is *functus officio* and has no further powers *qua* Confirming Officer, but he may be one of the Officers mentioned in s. 57 (2), and has the powers therein given (*Vide* p. 132 *infra*).

(v.) Execution of Sentences.

The Confirming Officer is responsible for the execution of the sentence, and will give the necessary orders for carrying it out; or he may, if necessary, suspend the execution of it for such time as seems expedient. s. 57.

Soldiers sentenced in India or a Colony to penal servitude, or to imprisonment or detention exceeding twelve months, are, as soon as practicable, to be transferred to a prison or detention barrack in the United Kingdom; unless, in the case of imprisonment or detention, the Court specially orders that the punishment is to take place abroad, or unless the soldier belongs to a class in respect of which the Secretary of State has declared that it would not be beneficial to the soldier to so transfer him, by reason either of the climate or place of his birth, or of the place of his enlistment. s. 131 (2). The Channel Islands and the Isle of Man are deemed to be Colonies for the purposes of execution of sentences of imprisonment and penal servitude. s. 187 (2).

A person sentenced by Court-Martial to penal servitude is called a "military convict." s. 58. Sentences of penal servitude are carried out in an ordinary convict prison, called in the Army Act a "penal servitude prison," under the orders of the Home Secretary, ss. 59–62; an officer sentenced to penal servitude must be first cashiered, s. 44 (2), and a soldier so sentenced must be discharged. K.R., 392 (xiv.).

A person sentenced in India or a Colony to penal servitude may be temporarily confined in an authorized prison, *i.e.*, one which the Governor-General in India, or the Governor of the Colony, has, with the concurrence of the Secretary of State, appointed for that purpose. s. 62 (2).

Sentences of imprisonment are carried out either in a public prison, or a military prison. s. 63 (1). A soldier who has been convicted of an offence of a disgraceful nature

under sections 17, 18 (4), (5), or 41, will be sent to a public prison; in other cases, he will be committed to a military prison, unless the term of imprisonment is short, and he is not to be discharged with ignominy, when he may, at the discretion of the Confirming Officer, undergo his sentence in a detention barrack. **s. 130; K.R., 607.**

A public prison is one in which ordinary criminals are received, and is under the management of the Home Secretary. A military prison is under the management of the Secretary of State for War, and only soldiers (or sailors of the Royal Navy) are confined therein. **s. 133** (*notes*).

A soldier awarded detention, either by Court-Martial or his Commanding Officer, will undergo his sentence in a detention barrack, or a branch detention barrack.

K.R., 607 (ii).

All the former central and district military prisons are now called detention barracks, and the former branch prisons are now branch detention barracks; and are used for the confinement of men sentenced to detention, or, in the special cases mentioned above to imprisonment.

K.R., 645, 647; A.O. $\frac{235}{07}$, $\frac{148}{10}$.

Soldiers sentenced to imprisonment will be committed to the civil prison at Wormwood Scrubbs, London.

A.O., $\frac{235}{15}$.

Sentences of penal servitude, imprisonment, or detention, commence to count from the date the original Proceedings were signed, whether the sentence is the original or a revised sentence, and even although the punishment has been substituted in commutation for a severer one. Thus, if a soldier is already under sentence of imprisonment, any fresh sentence of imprisonment will run concurrently with the unexpired term of his former sentence. **ss. 57 (5), 68 (1).**

Illustrations.

1. Private A. is sentenced to forty-eight days' imprisonment on the 10th March, 1917. The imprisonment will begin to count from that date.
2. Corporal B. is sentenced to be reduced to the rank of Lance-Corporal on the 1st April, 1917. The Court re-assembles for revision on the 4th April, and revokes this void sentence and passes a sentence of fifty-six days' imprisonment. The imprisonment will begin to count from the 1st April.

3. Private C. is sentenced to five years' penal servitude on the 15th May, 1917. The Confirming Officer commutes the sentence to two years' imprisonment on the 28th May. The imprisonment will begin to count from the 15th May.

4. On the 15th January, a Court sentence a soldier to death for "desertion when under orders for active service"; the Court is re-assembled for revision on the 29th January, and the Confirming Authority points out that there is not sufficient evidence to prove that the accused was "under orders for active service." The Court, therefore, revoke the former finding and sentence, and pass a sentence of two years' imprisonment. This will be reckoned from the 15th January.

5. On the 3rd May a Court are trying a soldier who is undergoing a sentence of 56 days, awarded on the 14th April; they wish to give him 84 days for the present offence. To effect this they must pass a sentence of 121 days, because he has still 37 more days to do under his former sentence, which will run concurrently with that now awarded.

In the case of soldiers on active service beyond the seas during the present war, who are sentenced to penal servitude or imprisonment, the Confirming Authority, when confirming the sentence, may direct that the man is not to be committed till the orders of a superior Military Authority (*i.e.*, the General Officer Commanding-in-Chief or a General Commanding an Army) have been obtained. This officer may suspend the sentence, in which case it will not begin to count until the soldier is actually committed. Such sentence will be reconsidered at intervals of not more than three months and if the man's conduct justifies such action it may be remitted. **A. (Susp. Sent.) Act, s. 1.**

If a soldier under a suspended sentence is again sentenced to penal servitude or imprisonment, the Authority suspending this sentence may order the two sentences to run concurrently or consecutively, provided that the total term of imprisonment under the two sentences does not exceed two years. A sentence of penal servitude, whether suspended or not, avoids any previous sentence of imprisonment.

A. (Susp. Sent.) Act, s. 1 (7).

By an amending Act the Army Council have been empowered to exercise these powers, and to appoint any General Officer a "Superior Military Authority," and certain General Officers Commanding at home have been so appointed.

A. (Susp. Sent.) Amend. Act, s. 1.

(vi.) Provost-Marshal.

A General Officer Commanding a body of troops abroad may appoint a Provost-Marshal, who will always be a Com-

missioned Officer; his assistants may be Officers or Non-Commissioned Officers. His duties are, to arrest offenders and he may carry into execution any punishments inflicted by sentence of Court-Martial, but he no longer has any power to inflict punishment on his own authority. When any soldier is undergoing field punishment in the custody of a Provost-Marshal or his assistants, he or they have the same powers as the governor of a military prison with respect to the prisoner. (*Vide post*, p. 137, as to his duty at a Field General Court-Martial.) **s. 74; K.R., 593.**

(vii.) Remission, Etc., after Confirmation.

After a sentence has been confirmed, the undermentioned authorities still have the power at any time to mitigate or remit any part of the punishment, or to commute it to a less one, provided always that this power must not be exercised by any Officer holding an inferior command to that of the Officer who originally confirmed the sentence.

The King, the Army Council, the General Officer Commanding-in-Chief the Command, the Officer in charge of Administration of the Command, the General or other Officer Commanding the District, Division, or Independent Brigade, or the Commander of the Coast Defences, where the soldier is, can exercise this power as regards persons under sentence anywhere.

In India, the Commander-in-Chief in India, or such other Officers as he, with the approval of the Governor-General, may appoint.

In a Colony, the Officer Commanding; and elsewhere, the Officer Commanding the Forces at that place.

s. 57 (2), (3); R.P., 126 (c).

If after confirmation it appears that the Proceedings are illegal or the accused has suffered serious injustice, the Confirming Authority should cancel the confirmation and order all record of the conviction to be removed. The same action will be taken by any superior Authority before whom the Proceedings come for review. At home reference should be made to the Judge-Advocate General before Proceedings are quashed. **K.R., 591.**

→

See Amendments

(viii.) Restitution of Stolen Property.

When any person has been convicted of stealing, embezzling, or feloniously receiving any property, the Army Council, or the Confirming Authority may order that such property, or any part of it, found in the possession of the offender, shall be restored to the owner, and a like order may be made with respect to any property in the accused's possession which appears to have been obtained by the conversion or exchange of any of the stolen property. Moreover, if any such property has been pawned or sold to another who acted innocently, this person may, on restoring it to the owner, apply to be re-imbursed the amount given in purchase or pawn, out of the money in the offender's possession. s. 75.

(ix.) Loss of Proceedings.

If the original Proceedings of any Court-Martial, or any part thereof is lost, any copy certified by the President or Judge-Advocate may be accepted in lieu, or if there is no such copy but sufficient evidence can be obtained of the charge, finding, sentence, and transactions of the Court, this evidence may be accepted if the accused consents. Such substituted copy or evidence can be confirmed and will be as valid as the original Proceedings. If in a case where confirmation is required no such copy or evidence is forthcoming, or if the accused does not give the consent required above, then the accused can be tried again, and the issue of an order convening the new Court will render the former Proceedings null and void. R.P. 100.

(x.) Preservation of Proceedings.

The Proceedings of all Courts-Martial (except Regimental Courts-Martial) are, after promulgation, sent to the Judge Advocate-General in London or India, or to the Admiralty (in case of Marines), and are there preserved for seven years from the date of confirmation in the case of a General Court-Martial, or three years in the case of any other Court. R.P., 98 (A). The Proceedings of a Regimental Court-Martial are kept with the unit till after the next Annual Inspection, after which they are sent to the Officer

in charge of the Records of the Corps, who preserves them for three years from the date of confirmation.

R.P., 9 (B); K.R., 1928.

During the time the Proceedings are preserved, the accused has the right to obtain a copy of them or any part of them on payment of the actual cost of the copy, not exceeding twopence for every folio of seventy-two words.

s. 124; R.P., 99.

Questions.

1. When the proceedings of a Court-Martial are forwarded for confirmation, in what different ways may the Confirming Officer exercise his powers in respect to them?
2. State what happens in the following cases:—The Confirming Officer (1) confirms the finding, but not the sentence, (2) sends back the finding for revision, (3) sends back the sentence for revision, (4) refuses to confirm.
3. Point out the duty of a Confirming Officer (1) when he considers a sentence too severe, (2) when he is of opinion that it is too lenient, (3) when the sentence awarded by a Court exceeds its powers.
4. Describe the course to be pursued by a Court-Martial, when the finding of "guilty" on one of the charges tried is sent back by the Confirming Officer for revision. What happens, if one of the members of the Court is unable, by reason of illness, to attend?
5. Comment on the following matters:—(1) a finding of "not guilty," (2) the commutation of a sentence.
6. Explain the circumstances under which a Confirming Officer might amend the wording of a sentence before confirming it.
7. A Confirming Officer sends back a sentence for revision on the ground that part of it is illegal. How would the Court deal with the matter? How would the proceedings on revision be affected if the President was unable to attend?

CHAPTER XII.

FIELD GENERAL COURTS-MARTIAL.

This Court can only be convened on active service or beyond the seas when it is not practicable to convene a General Court-Martial; but if the troops are not on active service, it can only try an offence committed against the person or property of an inhabitant of the country.

s. 49 (1).

Convening Authority.—Any Commanding Officer of a Corps or body of troops; but, except on active service, the Commanding Officer should not convene unless authorized by the General Officer Commanding the Forces to which he belongs. It should be noted that the convening order must be signed by the Convening Officer personally.

s. 49 (1); R.P., 105 (B).

Legal Minimum.—Three Officers, if possible; if not, then two.

s. 49 (1*b*).

Service required.—Each Officer should have held a commission for at least one year, but it has been ruled that Officers with less service sitting on the Court will not invalidate the Proceedings. If Officers of three years' service are available they will be detailed in preference.

R.P., 106 (C).

The Provost-Marshal, an Assistant Provost-Marshal, the Prosecutor, or a witness for the prosecution are disqualified from sitting on the Court.

R.P., 106 (D).

Corps of Members.—May belong to the same or different Corps.

s. 50 (1).

Rank of President.—Not below Field Officer, unless the Convening Officer is below that rank or is of opinion that a Field Officer is not available, when he must be a Captain, unless a Captain is not available, when he may be a Subaltern.

s. 49 (1*c*); R.P., 106 (E).

Rank of Members.—The members may be of any rank, and the restrictions laid down in s. 48 (7) do not apply.

s. 49 (2).

Jurisdiction.—All persons subject to military law, under the circumstances stated above. s. 49 (1).

Powers of Punishment.—If the Court consists of not less than three members, it has the powers of a General Court-Martial; if of only two members, then not exceeding imprisonment or field punishment. s. 49 (1*d*).

Confirming Authority.—Any Officer authorized to confirm a General Court-Martial; or, on active service, any Officer authorized by the Rules of Procedure to confirm a Field General Court-Martial, provided that sentence of death or penal servitude is not to be carried out until the decision of the Commander-in-Chief in the field is known, or unless owing to the nature of the country, great distance, or operations of the enemy delay is impracticable, when the sentence may be carried out if confirmed by the General or Field Officer Commanding the Force with which the accused is present. s. 54 (1*d*); R.P., 120 (D), (E).

A member of a Field General Court-Martial can only confirm if he has power to do so, and if he considers that it is not practicable to delay the case for reference to any other Officer. The Provost-Marshal, or an Assistant Provost-Marshal, or the Prosecutor cannot confirm the Proceedings of a Field General Court-Martial. R.P., 120 (B). (C).

As already noted in Chapter IV., the restrictions as to the trial of certain serious civil offences by Court-Martial do not apply to a Field General Court-Martial. s. 49 (3).

There is no provision in the Army Act or Rules of Procedure for the appointment of a Judge-Advocate.
R.P., 101 (A).

Differences in Procedure of a Field General Court-Martial.

The ordinary Rules of Procedure do not apply to these Courts, but the procedure is regulated by R.P., 105–120. The principal differences are as follows, in all other cases the procedure being similar to that of the ordinary Courts already considered in Chapter X.:—

The Court may be convened and the Proceedings recorded in a special form, given in the second Appendix to the Rules of Procedure, which is very much shorter than the one usually used, but if possible a short summary of the evidence of each witness is to be recorded and attached to the Proceedings. And if the Convening Officer considers that military exigencies or other circumstances prevent the use of even this abbreviated form, the Court can be carried on without any writing, except that the Provost-Marshal, or his assistant, if present, or in their absence the President, must keep such a record as is possible, giving at least the name or description of the accused, the charge, finding and sentence, with the minute of confirmation and any recommendation to mercy. The Convening Officer must report what the circumstances were which prevented the use of the prescribed form. R.P., 107, 114 (c).

Instead of a regular charge sheet, the charge may be made briefly in any language sufficient to describe the offence and show that it was one against the Army Act. R.P., 1 8.

In the event of a challenge, if the objection is allowed by any one member of the Court it is enough to carry it. R.P., 110 (B).

Sentence of death cannot be passed unless the Court are unanimous. s. 49 2; R.P., 118 (A).

If at any time during the trial the Court consider that any person should be tried by an ordinary Court, they may strike his name out of the Schedule or list of accused ordered to be tried by them. R.P., 119 (B).

Questions.

1. By whom, and under what circumstances, can a Field General Court-Martial be convened?
2. Of how many members is a Field General Court-Martial composed? What powers of punishment does it possess, and what are the regulations as to the rank of the President?

CHAPTER XIII.

EVIDENCE.

Evidence includes all legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation. There is a wide difference between *evidence* and *proof*—the latter being the effect of evidence. When the result of evidence is the undoubting assent to the certainty of the proposition which is the subject matter of the enquiry, such proposition is said to be proved. **Powell, p. 8.**

The region of evidence lies between moral *certainty* on the one hand, as its most perfect extreme and moral *possibility* on the other, as its most imperfect extreme. It does not look for more than the first, and it will not act on less than the last. **Powell, p. 2.**

There are several divisions of evidence, such as divisions into (1) primary and secondary, (2) direct and indirect or circumstantial, (3) oral, documentary and real. These divisions are explained later on. The following is an illustration of what is meant by "real" evidence. The production in Court of a knife, covered with blood, which has been found near the body of a murdered man, is offering *real* evidence. **Powell, p. 8.**

The rules of evidence are those which regulate the manner in which questions of fact may be determined for judicial purposes. Courts-Martial follow the same rules as are in force in ordinary Civil Courts of Criminal Jurisdiction in England. **s. 128; R.P., 73; Man., VI., 1.**

(i.) What Must be Proved.

With certain exceptions, the charge, as stated in the charge sheet, must be proved, and, unless the evidence supports this, the accused must be acquitted, even though it may have been shown that his conduct amounted to some other offence.

The exceptions are (1) where the distinction between the two offences is one of degree, in which case an accused charged with the more serious offence may be convicted of the lesser, *e.g.*, where an accused charged with murder is found guilty of manslaughter; and (2) where the distinction between the two offences is merely technical, *e.g.*, an accused charged with stealing may be found guilty of embezzlement, and *vice versâ*. Section 56 of the Army Act provides for cases of both these kinds, and allows a person charged with certain offences to be convicted of other offences of similar nature only technically distinct, and in any case allows an accused, charged with committing an offence under circumstances involving a higher degree of punishment, to be convicted of the offence, committed under circumstances involving a less degree of punishment.

s. 56; Man., VI., 8.

Illustrations.

1. Private A. is charged with desertion; the evidence shows that, though absent, he intended to return; the Court can convict him of absence without leave.

2. Colour-Serjeant B. is charged with embezzlement; the evidence shows that the crime was really larceny; the Court can convict him of stealing.

3. Serjeant C. is charged with wilfully allowing a person committed to his charge to escape; there is not sufficient evidence to show that the offence was committed wilfully; the Court can convict him of negligently allowing a person committed to his charge to escape.

4. Private D. is charged with selling his kit; there is no evidence to show he sold the articles; the Court cannot convict him of losing them by neglect.

It is sufficient if the substance of the charge is proved. Minor details, which are not essential to the constitution of the offence, may be treated as surplusage. As a rule, dates and places are immaterial, but in certain charges time and place are material, and must be proved as stated, *e.g.*, in a charge of a sentry asleep on his post; but in any case the discrepancy between the dates stated in the charge and those proved in evidence must not be too great, or the Court cannot convict. If the substance of the charge is proved, the Court can convict, and by a special finding can correct any immaterial discrepancies.

R.P., 44 (B); Man., VI., 9;
Powell, pp. 443, 446.

Illustrations.

1. Private A. is charged with losing by neglect his tunic, a flannel shirt, and two pairs of socks; the evidence shows that only one pair of socks is deficient; the Court can find him guilty of the charge; "with the exception of one pair of socks."

2. Private B. is charged with striking Corporal C. with a poker; the evidence shows the instrument used to have been a stick; the Court can convict, curing the defect by a special finding.

3. Private D. is charged with using insubordinate language to a superior on the 3rd November; the evidence shows the offence took place on the 4th November; the Court can convict.

4. Private E. is charged with absence from the 13th to 23rd August; the evidence shows that he was absent from the 13th to 23rd October, and not August; the Court must acquit him, as the divergence between the two dates is so great it amounts to a new charge.

Certain facts are assumed to be known to the Court, and do not require to be proved in evidence. The Court is said to take "*judicial notice*" of these facts. The principal matters so judicially noticed are Public Acts of Parliament, the general proceedings of Parliament, the rules of practice of the Supreme Court of Judicature, the Accession of the King, the existence of any State and Sovereign recognized by the King, certain Seals, the extent of the British Empire, the commencement and termination of war between the King and any other Sovereign, the divisions of time, etc. Courts-Martial would also take judicial notice of the relative rank of Officers and Non-Commissioned Officers, and the general duties appertaining to various officials; also as to whether an Officer were "in the execution of his office" or not, whether it was the duty of an escort to apprehend a soldier, etc. The Rules of Procedure are judicially noticed by all Courts, civil and military.

s 70 (3); R.P., 74; Man., VI., 10. 11: Stephen, Art 58.

(ii) Burden of Proof.

In considering upon which side the burden of proof or disproof of a criminal charge lies, the first rule is that the law presumes everyone to be innocent until legally convicted; therefore the duty of disproving a charge against him does not fall upon the accused, until the Prosecutor has brought forward evidence establishing facts from which his guilt will be inferred, unless he explains away this presumption of guilt raised against him. The second rule is that he who states any fact must prove it. Hence, taking these two

rules together, the burden of proof will at first lie on that party against whom the judgment of the Court would be given if no evidence at all were produced. In certain cases, the law requires an accused to prove any lawful excuse, or authority, or the absence of fraudulent intention ; and this is especially so when the matter is peculiarly within the knowledge of the accused. The burden of proof as to any particular fact lies on the person wishing the Court to believe it, unless the law provides that proof of this fact shall lie on any particular person.

As the trial proceeds, the burden of proof may shift from the Prosecutor to the accused, and then back to the Prosecutor.

On proof of an unlawful act having been committed by the accused, the law presumes a guilty intention, and the onus of proving any justification or excuse lies on the accused. The law, moreover, always presumes that anyone intends the usual and natural consequences of his act.

Man., VI., 12—14 ; Stephen, Arts. 93—96 ; Harris, p. 12.

Illustrations.

1. Serjeant A. is charged with releasing a person committed to his charge without due authority ; the fact of this person having been released having been proved, the burden of proving that he had proper authority will rest on A.
2. Private B. is charged with absence without leave ; the absence having been proved, the burden of proving that he had leave will rest on B.
3. Private C. is charged with stealing a pipe belonging to Serjeant D. ; the burden of proof is on the prosecution ; the evidence shows that the pipe was found in his possession soon after the theft took place ; the burden of proof is shifted to C. ; he proves that he bought the pipe from Private E., who represented that it was his ; the burden of proof again shifts to the prosecution.
4. Private F. is charged with the murder of a comrade ; the burden of proving any fact which will reduce the offence to manslaughter, or will justify the killing, rests on F.
5. Private G. is charged with stealing certain property. The stolen goods are found in his quarters ; it will be for him to account for their being there.

(iii.) Admissibility of Evidence.

The chief rule as to the admissibility of evidence is that it must be relevant ; that is, that it must tend to prove or disprove the charge. **R.P., 73 (A).** No hard and fast line can be drawn between facts that are relevant and those that are not, but each case must be treated on its own merits, in accordance with the following general rules.

Evidence is not admissible to show a general disposition to commit a crime; thus, on a charge of murder, evidence could not be given to show that the accused had attempted to murder *another* person, and thus was of a murderous disposition, but, as will be shown hereafter, evidence would be admissible to prove that he had made a previous attack on the *same* person, because that would tend to show his animus against the deceased. But where several offences are connected, then evidence about one is admissible as proof of the other. For example, at the trial of a Colour-Serjeant for desertion, evidence of his having embezzled a large sum would be admissible, as affording grounds to presume that he did not intend to return. Any fact connected with the question in issue, or which forms part of the same transaction, is relevant, as are any statements made by, or to, the doer of any act at the time of performance.

Man., VI., 15, 16. 17 20, 21;
Stephen, Arts. 2, 3, 8.

Illustrations.

1. Private A. is charged with stealing from an Officer's quarters; the fact that he was on duty in another part of the garrison at the time the theft took place is relevant.

2. Private B. is charged with desertion; the fact that he said to a comrade, as he was leaving the barracks, "Good-bye, Tom, you won't see me any more," is relevant.

Facts showing intention, knowledge, good or bad faith, and evidence as to motive, preparation, subsequent conduct, or explanatory statements, are considered relevant, and are admissible. Thus, as has already been pointed out, it is admissible on a charge of murder to prove that the accused made a previous attempt to kill the deceased, as that will show his animus against him. And so the intent in uttering counterfeit coin may be proved by evidence of previous or subsequent utterings, and even the bare possession of several bad pieces of money is evidence of guilty knowledge.

Man., VI., 22—25; Powell p. 471;
Stephen, Arts. 7, 11.

Illustrations.

1. Private A. is charged with writing a disrespectful letter to his superior; after the writing of the letter has been proved, the Prosecutor may prove that he spoke or wrote other disrespectful words to the same superior, to show his deliberate disrespect.

2. Private B. is charged with receiving articles of kit from F. knowing them to have been stolen; the fact that he had received other articles from F., which he knew were stolen, is relevant.

3. Private C. is charged with attempting to murder his Colour-Serjeant by firing at him on the range; the fact that the Colour-Serjeant had reported him for misconduct that morning is relevant.

4. Serjeant D. is charged with stealing plate from the Officers' Mess; the fact that he packed up certain articles of plate in boxes, and had arranged for a carrier to call for them, is relevant.

5. Colour-Serjeant E. is charged with embezzlement; the fact that he had attempted to desert is relevant.

Evidence tending to show that the accused has been guilty of other criminal acts besides those mentioned in the charge is only admissible in the following cases:—(1) where the Prosecution seeks to prove a system or course of conduct; (2) where the Prosecution seeks to rebut a suggestion of accident or mistake on the part of the accused; (3) where the Prosecution seeks to prove knowledge of some fact by the accused. Such evidence is, however, never *proof* that the accused committed the act charged, but is only admitted to show the quality of that act or the *mens rea*; *i.e.*, the guilty intention of the accused.

Man., VI., 93A.

The Proceedings of a Court of Inquiry, or any confession or statement or answer to a question made at any such Court are not admissible as evidence, except at the trial of an Officer or soldier for giving false evidence before the Court. **R.P., 124 (L).**

(iv.) Hearsay.

Hearsay is "the oral or written statement of a person who is not produced in Court, conveyed to the Court either by a witness or the instrumentality of a document." It will thus be seen that the term includes written statements as well as verbal ones. As a rule, hearsay evidence is inadmissible. The reasons for excluding such statements are: (1) they have no claim to credibility, because not made under the sanction of an oath or its equivalent; (2) the party affected by them has not had the opportunity of cross-examining their author; and (3) the author of the statements is not before the Court, so that they can judge, by his demeanour and manner of giving his evidence, as to his credibility. **Man., VI., 46; Powell, p. 132.**

This rule, however, does not exclude statements which have been made in the presence of the accused from being given in evidence; not in proof of the truth of the facts alleged in the statement, but in order to show the conduct of the accused on hearing the statement made.

Man., VI., 48; Stephen, Art. 8.

Illustration.

Private A. is charged with stealing Private B.'s watch; Serjeant C., a witness, states that Private D. told him, in the presence of A, that the watch had been found in A's bedding. This statement is admissible to show the conduct of A on hearing the statement made, but is not evidence that the watch was found as stated.

There are several exceptions to the rule that hearsay evidence is not admissible.

(A) *Dying Declarations.*—On the trial of any person for the murder or manslaughter of another, any statement made by the deceased as to the transaction which resulted in his death is admissible, provided it is proved to the satisfaction of the Court that the declarant was in immediate fear of death and had given up all hopes of recovery. It is considered that a person in such an awful situation will be as fully constrained to speak the truth as if he had been speaking under the sanction of an oath. The fact that his doctor had not given up hope of the deceased's recovery will not of itself render the declaration inadmissible, provided the deceased himself had no hope of recovery. Such declarations must, however, be very cautiously received; for it must be remembered that possibly the declarant may have been suffering physical or mental exhaustion at the time of making the statement; or the witness repeating it to the Court may intentionally, or from defect of memory, misrepresent what was said; and, in any case, such statements are usually made in the absence of the accused, who has had no opportunity of cross-examining. If time allows, any such statement should be reduced to writing at the time of making, and, if possible, a Magistrate or other responsible official should be present to attest the statement; but such a course, though expedient, is not absolutely necessary to render the declaration admissible. Provided the Court is satisfied as to the veracity, consciousness, and sense of religious responsibility, and of impending dissolution in the mind of the declarant at the time of making it, it can be received.

Man., VI., 49, 50; Powell, pp., 171—177; Stephen, Art. 26.

Illustrations.

1. Private A. is charged with the murder of B. B. makes a statement to the effect that A. had killed him; at the time of making this statement he had no hope of recovery, though his doctor had, and he actually lived a week after making it. The statement is admissible.
2. Private C. is charged with the murder of D. The latter makes a statement which is taken down in writing, and, on this statement being read over, corrects it to: "I make this statement with no hope, *at present*, of my recovery." D. died a few hours afterwards. This statement is inadmissible.
3. Private E. is charged with the murder of F. A death-bed confession by G. that he G. had murdered F. is inadmissible.

(B) *Statements forming part of the res gestæ.*—Statements made during the transaction, which is the subject of enquiry, are admissible, even though made when the accused is no longer present, provided they follow the incident immediately, so as to form, as it were, one continuous transaction. Statements made by a person as to his bodily or mental feelings may be given in evidence when it is a question as to what his feelings were at that particular time.

Man., VI., 51—54; Stephen, Arts. 8, 11.

Illustrations.

1. Private A. is charged with striking Serjeant B. The evidence shows that the alleged offence took place in a room when no one else was present. Private C., a witness states that as he was coming into the room he heard A say "Take that, you devil," but he saw no blow struck. This evidence is admissible.
2. Private C. is charged with murdering D. by poison. Statements made by D. as to his feelings and symptoms during the illness preceding his death are admissible.

(C) *Statements against self-interest by a person since deceased.*—The interest must be a pecuniary or proprietary one, and the deceased must have had peculiar means for knowing the matter stated. The whole statement is relevant, and not only that part which is against the interest of the deceased. Although the statement is *admissible*, it must be remembered that its *credibility* will depend on the character for veracity of the deceased.

Man., VI., 55; Powell, p. 178; Stephen, Art. 28.

Illustrations.

1. Serjeant A. is charged with embezzling money belonging to the Officers' Mess, which was entrusted to him to pay some local bills. A receipted bill, signed by a tradesman since deceased, is admissible in evidence.
2. Private B. is charged with desertion; a letter from Private C., since deceased, to B.'s mother, that he had procured a disguise for B, and helped him to get off, is inadmissible.

(D) *Statements made in the course of duty by a person since deceased.*—Such statements are admissible, provided they were made at, or soon after, the time when the matter reported occurred, and if the facts were within the personal knowledge of the declarant. Only the essential subject matter of the report or statement is relevant.

Man., VI., 56; Powell, p. 187; Stephen, Art. 27.

Illustration.

Private A. is charged with having made a false answer on enlistment as to his age. A statement in the Register of Baptism, made by the clergyman, (since deceased) that he was baptised on a certain date is admissible; a statement in the same register that he was born on a certain date is inadmissible, because it was not part of the clergyman's duty to make it.

(V.) Evidence as to Character.

Evidence of the accused's bad character cannot be given by the prosecution unless he has called evidence to show he has a good character, in which case the Prosecutor can call witnesses to rebut this evidence. On the other hand, evidence as to character is relevant for the defence, and an accused can always call witnesses to prove his good character, or he may call for the production of his Conduct Sheet. But it must be remembered that the good character he seeks to prove must be more than general, that is, the special virtues he attempts to show he possesses must be such as are antagonistic to the commission of the particular crime with which he is charged. For instance, it would be no use for a man charged with cowardice to prove that he was always a clean, smart soldier and respectful to his Officers; or, on the other hand, for a man charged with theft to show he had a known character for bravery. Care must be taken to understand that, as regards evidence as to character, what is now under consideration is evidence as to character given *before the finding* with a view to proving or disproving the charge, and this must be quite distinct from the evidence as to character given *after the finding* of guilty, which is only given to assist the Court in awarding a proper sentence.

Man., VI., 17—19; Stephen, Art. 56.

(vi.) Acts and Statements of Conspirators.

In cases of conspiracy, *e.g.*, mutiny, after proof of the existence of the plot and of the accused's connexion therewith, evidence of anything done, written, or said, in furtherance of the common object, not only by him, but by any other of the conspirators, may be given against him. But such actions or statements cannot be proved if they are not connected with the common object.

Man., VI., 26, 27; Stephen, Art. 4.

Illustration.

Private A. is charged with conspiring to mutiny; a letter from Private B., another mutineer, to a friend, describing their intended plans, is not admissible against A.

(vii.) Documents made Evidence by the Army Act.

As already noted the rule excluding hearsay evidence includes written as well as oral statements, hence letters and other private documents will be excluded under the rule. As regards documents of a public nature, exceptions are made, and entries in public records are admissible as evidence of the facts so recorded. The Army Act, in particular, makes the following documents evidence of the facts stated against them:—

(A) The attestation paper or re-engagement paper	is evidence of the person having given the answers therein stated.

The enlistment of a person may be proved by a certified copy of the attestation paper.

(B) A letter or return as to the service of any person in His Majesty's Forces, signed by the Commanding Officer of any unit or ship,	is evidence of the facts in such letter or return.
(C) An Army List or Gazette, purporting to be published by authority and printed by a Government printer,	is evidence of the status of Officers and their appointments, Corps, etc.

(D) Any warrant or order made under the Army Act	is evidence of the matters therein stated.
(E) Any record made in Regimental books in pursuance of any Act or the King's Regulations, signed by the proper Officer,	is evidence of the facts therein stated.
(F) A *copy* of any such record duly certified to be a true copy by the Officer having the custody of the regimental book	is evidence of such record.
(G) A descriptive return, signed by a Justice,	is evidence of the matters therein stated.
(H) A certificate signed by the Commanding Officer of any unit or a Police Officer as to the fact, date, and place of a deserter or absentee surrendering	is evidence of these matters as stated.
(I) A certificate, signed by the Clerk of the Court or other proper official,	is evidence of the conviction and sentence, or order, or acquittal, by a Civil Court, of any person subject to military law.
(J) The Proceedings of a Court-Martial, produced from the custody of the Judge-Advocate or other proper Officer,	are evidence of the transactions of that Court.

ss. 163—165, and 4th Schedule ; A. Ann. Act, 1917 s. 5 (1) ; Man., VI., 59—62.

(viii.) PRIMARY AND SECONDARY EVIDENCE OF DOCUMENTS.

Primary evidence of the contents of a document is the production of the document itself in Court ; secondary evidence is a copy of the document, or the oral account of its contents, given by a witness who has read the original and

can swear to its contents. **Man., VI., 32, 36.** It is a rule of evidence that the best evidence obtainable must always be produced, and, therefore, in the case of private documents, secondary evidence can never be given when the document is forthcoming. In the case of public documents, secondary evidence of their contents is, by various Statutes, permitted to be given, by production of properly certified copies, *e.g.*, those mentioned in s. 163 (*h*) of the Army Act.

But it has been ruled that this does not include such documents as defaulter rolls, etc., so that when their contents are pertinent to the issue, the document itself must be produced and a copy attached to the Proceedings.

Man., VI., 30, 31, 34, 37; Powell, pp. 4, 5.

When it is necessary to prove that a soldier was a defaulter at the time he committed an offence, a certified true copy of the record of the punishment taken from the Guard Report or Minor Offence Report must be produced and attached to the Proceedings. (For Form *vide* K.R., 581A.)

The chief occasions on which secondary evidence of a private document may be given are:—

(a) When the original appears to be in the possession of the adverse party, who refuses to produce it.

(b) When it appears to be in the possession of a stranger, who refuses to produce it.

(c) When due search has been made for the original, and it appears to be lost or destroyed.

(d) When it is of such a nature as not to be easily removable into court, *e.g.*, a writing chalked on a fence; an inscription on a tomb-stone; or when it is in a country from which it is not permitted to be removed.

(e) An entry in a banker's book, for which special provision is made by a Statute.

Man., VI., 35; Stephen, Art. 71.

Every document produced in evidence must be properly "put in," *i.e.*, produced to the Court by a witness who has himself been sworn. **Man., VI, 105 *note*, and p. 705.**

It must be remarked, in connexion with the rule as to best evidence, that the law does not require the fullest possible proof of a fact to be given. As a rule, one

credible witness, or an admissible document, is sufficient in law to establish any fact; but, as a matter of practice, a Court would be slow to convict of a serious crime on the unsupported testimony of one witness. The two principal exceptions to the rule that one witness is sufficient are (1) in charges of treason or treason felony, no one can be convicted, unless two witnesses swear to the treason, or he confesses in open Court; this is provided by Statute, 7 & 8, William III., c. 3, ss. 2, 4; and (2) no one can be convicted of perjury on the evidence of one witness unless the witness is corroborated in some material point; otherwise it is simply a case of one man's oath against the other, and each would be equally credible.

Man., VI., 44, 45; Powell, pp. 44—46, 54.

(ix.) Circumstantial Evidence.

It is usual to distinguish between two kinds of evidence, viz.: *Direct* and *Circumstantial* (or *Indirect*). By the former we mean the evidence of a person who actually saw, or otherwise observed with his senses, the fact to which he testifies. Indirect or circumstantial evidence is evidence of facts from which the main fact of the accused's guilt or innocence may be presumed. In comparing them, it must be remembered that the difference is not one of *degree* (as in the case of primary and secondary evidence), but of *kind*. Circumstantial evidence is not inferior to direct evidence, and may be superior to it; for "facts cannot lie," while witnesses may (and do). But, on the other hand, it must be remembered that the inference suggested by facts is not always the true one; and, therefore, before a Court convicts on circumstantial evidence only, they should be satisfied that the facts proved are not only consistent with the accused's guilt, but are inconsistent with his innocence.

Man., VI., 41, 42; Harris, p. 421; Powell, pp. 5, 6.

(x.) Opinion.

The general rule is that a witness must only state facts, and that his mere personal opinion is not evidence. The following are the principal exceptions to this rule:—

(a) On questions of identification a witness is allowed to speak as to his opinion or belief.

(*b*) A witness's opinion is admissible to prove the apparent condition or state of a person or thing.

(*c*) The opinions of skilled or scientific witnesses (called usually experts) are admissible to elucidate strictly professional or scientific matters.

Man., VI., 63—67; Powell, pp. 91—94.

Illustrations.

1. A witness may give his opinion as to whether a certain document is in the handwriting of a person with whose writing he is well acquainted.
2. A witness may state that a person appeared rich or poor, or young or old.
3. A medical man may give his opinion as to the action of a poison and the usual symptoms produced by it.
4. In a case of alleged unsoundness of mind, a medical man may give his opinion as to whether the symptoms exhibited by the alleged lunatic usually show unsoundness of mind.
5. An Officer may give an opinion on any technical point connected with military science which the members of the Court would not be expected to know, *e.g.*, an Engineer Officer, on a point of fortification, or an Artillery Officer, on a detail of artillery science; but on points within ordinary military professional knowledge, the Court must take judicial notice of the matter and form their own opinion.

Experts are only considered such, when the subject with which they deal is one which requires a course of special study or experience. It is for the Court to decide whether the skill of the witness, in any matter on which evidence of his opinion is offered, is sufficient to entitle him to be considered an expert. **Stephen, Art. 49.**

The evidence of experts must be received with caution, because they are apt to make themselves partisans, and their minds are biassed in favour of the cause they are called to support. **Powell, p. 96.**

Experts are often called to prove handwriting; but so long as a witness shows he is skilled in the comparison of handwritings, he need not be a professional expert. The witness may be called on to prove his skill by comparing writings before the Court. The genuineness or otherwise of handwriting in dispute may be proved in various ways:—

(*a*) By calling the party who actually wrote it.

(*b*) By a witness who actually saw the party write.

(*c*) By a witness who is acquainted with the handwriting of the supposed writer, from the fact that he had seen him write at any time, even though only once, or that he has received documents, purporting to be written by that person, in answer to others addressed by the witness to him.

(*d*) By a witness, skilled in comparing handwritings, giving his opinion, by comparing the writing with any writing proved to the satisfaction of the Court to be the genuine writing of the party.

Man., VI., 67; Powell, p. 330; Stephen, Arts 51, 52.

It has been decided that a witness who swears falsely that he *thinks* or *believes*, is equally guilty of perjury with one who swears positively to what he knows is untrue.

Man., VI., 68.

(xi.) Admissions and Confessions.

An admission is a statement, oral or written, suggesting any inference as to any fact in issue or relevant thereto, made by, or on behalf of, any party to the proceeding. Such admissions are, as a rule, only relevant as against the party making them, and not in his favour. In criminal proceedings, admissions, as distinguished from confessions, are, strictly speaking, not admissible; this does not extend to things said or done by the accused, as part of the *res gestæ*, *e.g.*, an entry made by a person in an account book of the receipt of money is, on proof that he made the entry, receivable as an admission, on his part, of the receipt of the same. **Man., VI., 72,** and *note*; **Stephen, Art. 15.**

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. **Stephen, Art. 21.**

A confession can only be used against the party making it; except a confession by an accomplice, made in the presence of another, is admissible so far as to show the conduct of the latter on hearing the confession made. A confession is only admissible if it is proved affirmatively to have been made entirely voluntarily. It is not deemed to be voluntary if it was caused by any inducement, threat, or promise proceeding from a person in authority, and having reference to the charge against the accused; and if it gave the accused reasonable grounds for supposing that, by making the confession, he would gain some advantage or escape some evil in connexion with the charge against him.

The Prosecutor, Officers of Justice having the accused in custody, Magistrates, and other persons in similar positions, are persons in authority. The master of an accused is not, unless the crime was against him.

A confession is not involuntary because the accused was caused, by the exhortations of a person in authority, to make it as a *religious* duty, or by any inducement collateral to the proceedings, or held out by a person not in authority. It is deemed to be voluntary if made after the complete removal of the impression produced by any threat or promise, or other inducement, which would have rendered it involuntary. **Man., VI., 73–77; Stephen, Arts. 21, 22.**

Evidence amounting to confession may be used as such against the person who gave it; and similarly statements made by an accused to his Commanding Officer investigating the charge may be used as a confession. **Man., VI., 81.**

No confession, or statement, or the answer to any question made or given at a Court of Inquiry is admissible against any Officer or soldier, except when he is tried under s. 29 of the Army Act. **R.P. 124 (L).**

Facts, discovered in consequence of confessions improperly obtained, may be proved, even though the confession itself is inadmissible. If a confession is used, the whole of it must be given in evidence, and not only the part adverse to the accused. **Man., VI., 78, 80; Stephen, Art. 22.**

Illustrations.

1. A handbill, issued by the Secretary of State, promising a pardon to any accomplice who would confess as to a murder, induces the accused to make a confession. This is not voluntary.
2. The Chaplain exhorts an accused to confess his sins; and the latter makes a confession. This is voluntary.
3. The Serjeant of the Guard promises a soldier in arrest to let him have some tobacco if he will acknowledge his offence. The latter does so. This is a voluntary confession.
4. The Officer Commanding the accused's Company promises to try to get the Commanding Officer to pardon his offence if he will make a confession. The Commanding Officer refuses, and, after this has been reported to the man, he makes a confession. This is voluntary.
5. A soldier, accused of theft, makes a confession under circumstances which prevents it from being received as voluntary. Part of it is to the effect that the stolen property is concealed in a certain place. Evidence may be given to prove that he said this, and that the property was found at the place indicated.

(xii.) Competency of Witnesses.

As a rule, all persons are competent witnesses; the only exceptions being in the case of one prevented, in the opinion

of the Court, by extreme youth, or disease affecting his mind, from understanding the facts he is to testify to, or from realizing the necessity of speaking the truth. A lunatic, *i.e.*, one who has lost his reason, may give evidence during lucid intervals. A drunken person is incompetent while under the influence of drink, but may be examined when sober. There is no legal age which fixes the competency of a child. The Court must decide in each case by the intelligence of the proposed witness, and, by examining it, to see if it understands the obligations of an oath. Former rules excluding witnesses on the ground of want of religious belief, or general bad character, or because they are parties to the case, are no longer the law; but, as already pointed out, it must be distinctly remembered that it by no means follows that all evidence that is *admissible* is, therefore, *credible*, and, in weighing the evidence, the Court must carefully consider any facts likely to diminish the credibility of the witnesses who gave it. One ground for relying on testimony is its *probability*; *i.e.*, its accordance with facts previously known. It has been observed by a Judge that "there is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with those facts, according to the ordinary course of human affairs and the usual habits of life."

Man., VI., 82, 87—91; Powell, pp. 4, 5, 23—33; Stephen, Arts. 106, 107.

A member of a Court-Martial is incompetent to give evidence for the prosecution, but is a competent witness for the defence; though, of course, if it is known that an accused intends to call any Officer in his defence, such Officer should not be detailed to serve on the Court.

Man., VI, 90.

One radical change in the law of evidence was made by the Criminal Evidence Act, 1898. Before this Act, except in a few cases specially provided for in various Statutes, the accused, and the husband or wife of the accused, were incompetent to give evidence either for the prosecution or

defence, and this rule extended to the case of accused jointly tried. Under the present law, an accused can, if he wishes, give evidence in his defence at any stage of the proceedings, but he cannot be *compelled* to give evidence, and no comment may be made by the prosecution upon the fact of his having refused to do so. A like rule now applies to the husband or wife of an accused, and, in the case of accused jointly tried, they may be witnesses for the defence, but only if the accused chooses to call them. A wife can still be called as witness for the prosecution in the special cases provided for by Statute, as above mentioned, *e.g.*, in cases of personal violence against her, or in cases of offences against women and girls under the Criminal Law Amendment Act, 1885. If the evidence of one accused is wanted against another who is being jointly tried with him, he should be released, and he is then said to turn King's evidence. But the evidence of an accomplice is considered "tainted," and should always be received with caution, and a Court should seldom, if ever, convict on the unsupported evidence of an accomplice.

The wife of the Prosecutor is competent to give evidence for the prosecution or defence.

Man., VI., 83—86 ; Stephen, Art. 108.

(xiii.) Privileges of Witnesses.

Although a witness may be *competent* to give evidence, it does not follow that he can be *compelled* to do so. For example, an accused is, by the change in the law just noted, competent to give evidence in his defence, but he cannot be compelled to do so against his will, neither can his wife be called as a witness unless he requests that she may be so called in his defence. In the case of witnesses other than the accused, there are many questions which they are not compelled to answer, and some which they will not be permitted to answer. When a witness is not compellable to answer a question or to produce some particular document, it is because some privilege intervenes, which may either be the privilege of the witness himself or of some third party.

Man., VI., 92 : Powell, p. 99.

In the first place, no witness (except the accused when giving evidence in his defence) can be compelled to answer any question or produce any document tending to incriminate himself or the wife or husband of the witness, *i.e.*, to show that he had done anything which would expose him to a criminal charge. This privilege does not extend to answers tending to expose him to civil liability, *e.g.*, an action for debt. The witness may, if he likes, waive his privilege and answer at his peril.

Man. VI., 93, 94, 95; Powell, p. 100; Stephen, Art. 120.

When the accused is giving evidence on his own behalf, he may be asked a question that would tend to incriminate him as to the offence charged; but he cannot be compelled to answer any question tending to show that he has committed any other offence unless (1) the proof that he has committed this other offence is admissible to show that he is guilty of the offence now charged; or (2) he has asked questions of the witnesses for the prosecution to prove his own good character or given evidence to this effect, or if the conduct of the defence has been such as to involve imputations on the character of the Prosecutor or his witnesses; or (3) he has given evidence against any other person charged with the same offence. He may not be asked questions tending to incriminate his wife.

R.P., 80; Man., VI., 93A.

A witness cannot be compelled to answer any question relating to State affairs without the permission of the Head of the Department concerned. Similarly, a witness cannot be compelled to answer any question, the answer to which would tend to disclose the names of persons by or to whom information was given as to the commission of offences.

Man., VI., 96—99; Powell, p. 125; Stephen, Arts. 112, 113.

No question may be put to a witness as to the votes of the members of any Court-Martial previously held.

A.O. $\frac{9}{01}$.

Neither a husband nor wife is compellable to disclose any communication made to him or her by the other party during marriage, and this privilege continues for the benefit of the survivor even after the death of one of the parties.

Man., VI., 100; Powell, p. 41; Stephen, Art. 110.

A legal adviser is not competent, without his client's express consent, to disclose any communication made to him as such legal adviser by, or on behalf of, his client, whether such communication was oral or documentary, and whether or not the relationship has terminated. This privilege does not extend to any communication made in furtherance of a criminal purpose, or any fact he may have observed, during the course of his employment, showing a crime or fraud has been committed since the commencement of his employment, or any fact he has become aware of otherwise than in his professional capacity. The expression, "legal adviser," includes barristers, solicitors, their clerks, and interpreters between them and their clients. It will include an Officer or other person who has acted as accused's friend at a Court-Martial. The privilege is the client's, and if he choose to waive it the witness must answer. No other relationship except this legal one gives any such privilege, and clergymen and medical advisers may be compelled to disclose communications made to them in professional confidence, but it is not the custom to press for such disclosures in the case of clergymen, and several Judges have expressed themselves strongly against such a course.

Man., VI., 101, 102 ; Powell, pp. 106 *et seq.*, **121 ; Stephen, Arts. 115—117** and *note* xliv.

Illustrations.

1. A., a civilian witness against Private B., who is charged with stealing public property, is asked whether he bought any of these stores from the accused: A. can refuse to answer, as the reply might render him liable to a prosecution under section 156 of the Army Act.

2. Serjeant C., a witness, is asked by the accused, "Were you not convicted of embezzlement by a District Court-Martial in 1895?" The witness must answer this question.

3. Colonel D., a witness, is asked on behalf of the accused, Lieutenant E., a question as to the Confidential Report he had sent in about the latter. This question cannot be answered without the permission of the Secretary of State for War.

4. Private F., a witness for the prosecution, is asked, in cross-examination, if he was not, four years ago, "Private G." of another Regiment. If the answer would expose him to a trial for fraudulent enlistment, he can refuse to answer.

5. A Warrant Officer is being tried for having given false evidence at a Court-Martial for the trial of Lieutenant H., an Officer of the Regiment; Captain I, who acted as accused's friend at the former trial, is called as witness by the accused and asked to produce a note written to him by H. relating to the conduct of his defence. The witness cannot produce the document without Lieutenant H.'s consent.

(xiv.) Examination of Witnesses.

Every witness (including one producing documents) before giving his evidence, must be sworn in the manner prescribed by the Rules of Procedure, unless he is of a class permitted to affirm. **s. 52 (3); R.P., 82; Man., p. 705.** The one exception to this rule is in the case of a charge of having carnal knowledge of a girl under sixteen, when the girl herself or any other child of tender years is offered as a witness and does not understand the nature of an oath, the Court may allow the child to give evidence without being sworn, if satisfied with its intelligence. Such unsworn evidence must, however, be corroborated

Man., VI., 87 *note*; VII., 38.

The witness may then be submitted (1) to examination-in-chief by the party calling him, (2) to cross-examination by the opposite party, and (3) to re-examination by the party calling him. He is also liable to be examined by the Court and the Judge-Advocate, if there be one.

R.P., 84, 85; Powell, p. 423.

In the examination-in-chief, a witness must not, as a rule, be asked a leading question, *i.e.*, one which suggests the answer required. The exceptions to this rule are, when the questions relate only to introductory matter, and not to the substance of the issue; or when the witness is very young, or is clearly somewhat deficient in understanding, and requires help to get his evidence out of him properly; or, lastly, in the case of a hostile witness. In these last cases, leading questions may, by the leave of the Court, be put. The reason for excluding such questions is to prevent either party putting into the mouth of the witness the story he wishes him to tell. Of course, in the case of a hostile witness, the reason for the rule disappears; a hostile witness being one who has been called by either party, but who, by his manner, shows he is distinctly reluctant to give his evidence; such an one may be treated exactly as though he had been called by the opposite side, with the one exception, that the party calling him must not impeach his credit by general evidence of bad character; he has called him and produced him to the Court, and he cannot now seek to show

that he is unworthy of belief. He may, however, contradict him by other evidence, or prove that he has previously made a statement at variance with his present testimony.

Man., VI., 106—111 : Stephen, Arts. 128—132 ; Powell, p. 428.

When the examination-in-chief is concluded, the opposite party has the right to cross-examine. The object of the cross-examination is to impeach the accuracy, credibility, and general value of the evidence given by the witness, and to elicit facts favourable to the cross-examining party. Leading questions may be asked ; and irrelevant questions put, in order to throw the witness off his guard. The witness may be asked any questions which shake his credit by injuring his character, but he can decline to answer if he is entitled to claim privilege as explained in the last section. Evidence cannot be given to contradict his answers to questions which may shake his credit by injuring his character, except when (1) he is asked if he has ever been convicted of felony or misdemeanour, and he denies or refuses to answer ; (2) he is asked a question to show he is not impartial ; (3) he has previously made an inconsistent statement, or (4) he can be shown to be a notorious liar. If the imputation conveyed by any question would only injure the character of the witness, but would not, in the opinion of the Court, shake his credit, they will not compel him to answer it ; and no further examination on this matter will be allowed. The credit of a witness may be impeached by the evidence of other witnesses who swear that they believe him to be unworthy of belief on his oath; they may not be asked their reasons for this belief in their examination-in-chief, but in cross-examination they can be asked such reasons. When the credit of a witness has been thus impeached, the party calling him may call other witnesses to re-establish his credit.

R.P., 92 (B) ; Man., VI., 112—117 ; Powell, pp. 429 *et seq.* ; Stephen, Arts. 129—133.

After the cross-examination, the witness may be re-examined by the party calling him for the purpose of reconciling any discrepancies that may have arisen between the

evidence given in the examination-in-chief and the cross-examination, or to remove any suspicion which the cross-examination may have thrown on the evidence. Such re-examination must be confined to matters arising out of the cross-examination, and cannot be used to repair omissions in the examination-in-chief. If new matter is, by the leave of the Court, introduced, then the opposite party can cross-examine further on such new matter.

Man., VI., 118; Powell, p. 439; Stephen, Art. 127.

All questions will be put to the witnesses directly by the party asking them, without the intervention of the Court. The evidence will be taken down in a narrative form, as nearly as possible in the words used, unless the Prosecutor, prisoner, Judge-Advocate, or the Court consider any question and answer material, when they will be recorded *verbatim*. Similarly, any question objected to, with the grounds of objection, and the decision of the Court, will be recorded if any of the above-named consider it necessary. At the conclusion of his evidence, the evidence as taken down will be read over to the witness, to give him an opportunity of correcting any mistakes, either in the evidence he gave, or in the way it has been taken down.

R.P., 83, 95 (B) (C).

A witness may not read his evidence, but he may refresh his memory by referring to any notes, provided such notes were made by him, or with his knowledge of their correctness, soon after the occurrence to which they relate, and while the facts were fresh in his memory. These notes must, if the opposite party wish, be handed over to him for inspection, and he can cross-examine the witness on them.

Powell, pp. 336—339; Stephen, Arts. 136, 137.

Illustrations.

1. Private A. is charged with desertion. Serjeant B., a witness for the prosecution, is asked by the Prosecutor, "Was the accused about to enter the train to Southampton, dressed in plain clothes, when you arrested him?" This is a leading question, and can be objected to.

2. Private C. is charged with stealing a watch from a shop in the town. Private D., a witness for the prosecution, is asked by the Prosecutor, "Were you looking in at Mr. E.'s shop window about 4 p.m. on the 11th November?" This is only introductory, and, therefore, though a leading question, may be put.

3 The same witness is afterwards asked, "Did you see the accused take up a watch off the counter?" This is a leading question on a material point, and cannot be put. The question should be, "Did you see the accused do anything?"

4. Private F. is charged with absence and deficiency of kit. Serjeant G. and Lance-Corporal H. may both use the list of deficiencies which they made and signed when they took an inventory of his kit on his being reported absent, to refresh their memories as to the articles deficient.

Questions.

1. What is meant by the burden of proof?
2. What documents does the Army Act declare shall be evidence for the purpose of proving:—
   (*a*) The answer made by a recruit to questions put to him at attestation?
   (*b*) The fact that a certain man enlisted, in a certain Corps, at a particular place and date?
   (*c*) Whether a man, who says he is a deserter from a certain Corps, has ever belonged to it or not?
   (*d*) The conviction and the sentence passed by a Civil Court upon a soldier?
3. What is meant by a "dying declaration?" Under what circumstances would a dying declaration be admissible in evidence before a Court-Martial?
4. Explain what is meant by hearsay evidence, and point out the cases in which such evidence would be admissible before a Court-Martial.
5. To what extent are the following statements admissible in evidence:—
   (1) Statements made to a witness in the presence of the accused?
   (2) Statements made to a witness in the accused's absence?
   (3) Statements made to a witness by the accused?
6 Explain the circumstances under which a witness giving evidence at a Court-Martial is not obliged to answer a question put to him.
7. Explain the state of the law as to clergymen, medical men, and lawyers giving evidence before a Court-Martial as to matters confided to them in their professional capacity.

8. By the Criminal Evidence Act of 1898, an accused may give evidence himself. Give a summary of this law in so far as it affects Courts-Martial.
9. State generally the rules as to the cross-examination and re-examination of witnesses. In what way does the position of an accused, who elects to give evidence himself, differ from that of any ordinary witness for the defence?
10. In respect of the law of evidence, explain what is meant by (1) burden of proof, (2) relevant evidence, (3) circumstantial evidence.
11. Distinguish between the primary and secondary evidence of a document. How would secondary evidence be given of the contents of a document which has been proved to have been burnt?
12. Distinguish between direct and circumstantial evidence. State the general rule as to the admissibility in evidence of a confession.
13. In considering the admissibility of evidence tendered by witnesses before a Court-Martial, to what points should the special attention of the Court be directed.

CHAPTER XIV.

COURTS OF INQUIRY AND BOARDS.

A Court of Inquiry may be assembled by the Army Council or any Commanding Officer, whether of one or more Corps. Such Court has no judicial power, but will merely collect evidence and report. The Court will give no opinion on any point involving the conduct of any Officer or soldier, unless so directed by the Convening Officer. The Court cannot compel the attendance of civilian witnesses, and, except in the case of illegal absence or on recovered prisoners of war, the evidence will only be taken on oath if the Convening Officer so directs. Such Court may consist of any number of members of any branch of the Service, but three will usually be enough, the senior either being appointed President by name, or acting as such by virtue of his seniority. Whenever the inquiry affects the character of any Officer or soldier he must be given an opportunity of being present throughout and of making any defence he thinks fit. **ss. 70 (5), 72 (1); R.P., 124; K.R., 666, 667**

The law as to the Court of Inquiry, assembled to inquire into the illegal absence of a soldier, has already been explained on p. 29.

Whenever a soldier is injured, either on or off duty, the Medical Officer will forward a certificate, as to the extent of the injury, to the man's Commanding Officer, as soon as possible. If he certifies that the injury is slight and unlikely to cause permanent ill effects, no Court of Inquiry will be held. If, however, the injury is serious, or doubt exists as to the cause, or whether the soldier was on duty or not, or in any other case where the Commanding Officer thinks necessary, a Court of Inquiry is to be assembled to investigate the circumstances. The Court gives no opinion; but the Commanding Officer records his opinion on the evidence. The proceedings are then confirmed by the Brigade Commander, who notes any remission of hospital stoppages he may make. It will be noted in the man's Medical History Sheet that the Court has been held, and

whether he was on duty, or to blame, or not; and the Medical Officer will record his opinion as to the effect of the injury on the man's service. The Proceedings are attached to the man's original Attestation Paper. **K.R.. 674.**

Whenever Officers or soldiers are taken prisoners of war, a Court of Inquiry is held as soon as possible after their return, to inquire into the conduct of the senior Officer or soldier of the party. Before commencing, each member makes a "declaration on honour." The evidence is taken on oath. The Court records an opinion as to whether the prisoners were captured by the chances of war, or through neglect or misconduct. The Proceedings are sent to the War Office. **R.P., 124 (II) (i); K.R., 675.**

A Court of Inquiry is also held whenever public stores, equipment, etc., are lost, stolen, damaged, or found to be deficient, or in case of structural damage by fire or otherwise to any building, if the loss or cost of structural repairs exceeds £50. **K.R., 670.**

Committees and Boards differ from Courts of Inquiry only in so far that the objects for which they are assembled should not involve any point of discipline, **K.R., 676**; as for example the Committee of Adjustment to make up the non-effective account of a deceased soldier, **R.D. Act, s. 1**; or the Boards assembled to report on new buildings, **K.R., 1035,** or conduct the examination of Officers for promotion. **K.R., 873—876.**

QUESTIONS.

1. With regard to the Court of Inquiry on the illegal absence of a soldier, state the regulation as to—(1) its assembly, (2) constitution, (3) method of taking evidence, (4) record of proceedings.
2. Distinguish between a Court of Inquiry and a Board. State the regulations in connexion with a Court of Inquiry as to the taking evidence on oath, and as to utilizing the proceedings of the Court at a subsequent trial by Court-Martial, which is the outcome of the Court of Inquiry.
3. Are witnesses sworn when giving evidence at a Court of Inquiry?

CHAPTER XV.

DISCIPLINE ON BOARD SHIP.

Troops are sometimes embarked on board one of His Majesty's ships for conveyance to foreign parts; until recently, nearly all movements of troops to and from abroad were carried out by troopships, *i.e.*, vessels belonging to the Royal Navy. By the Naval Discipline Act, 1866, it is enacted that, whenever troops are embarked on board any of His Majesty's ships, they are to be subject to the provisions of that Act, in such manner as may be directed by Order in Council. **29 & 30 Vict., c. 109, s. 88.** The Army Act specially lays down that nothing contained in it is to affect the application of the Naval Discipline Act or any Order in Council made thereunder. **s. 186.**

The latest Orders in Council, made under the authority of the last mentioned Act, are those of 6th February, 1882 (as amended by Order in Council of 30th June, 1890), and of 13th February, 1912, further amending the former one, and their chief points are as follows :—

All troops on board are under the command of the Captain of the ship and the senior Naval Officer present, and all under the equivalent rank of Captain in the Navy, or doing duty with troops, are under the Officer of the Watch. Any offence against the discipline of the ship is made an offence against s. 40 of the Army Act. The Captain of the ship can have any offender put in arrest or confinement. If the offence is such that it can only be adequately dealt with by General Court-Martial or District Court-Martial, the offender will, with the Captain's concurrence, be disembarked at the first opportunity, for trial, as these Courts cannot be held on board a King's ship. If a Non-Commissioned Officer commits an offence which the Commanding Officer of the ship and the Commanding Officer of the troops think can be dealt with by Regimental Court-

Martial, the former may, by order in writing, authorize the latter to convene such a Court. The only punishments the Court can give are reduction, fines, and stoppages. Such sentence must, in addition to the usual confirmation, also receive the concurrence of the Captain of the ship before it can be carried into execution ; if this concurrence is withheld, the Military Commanding Officer must suspend execution of the sentence till the soldier under sentence has been disembarked. If a private soldier commits a serious offence, the Captain of the ship can deal with it, and can, by warrant under his hand and that of the Commanding Officer of the troops, sentence him to either (1) imprisonment with hard labour or detention up to 42 days ; (2) confinement in a cell up to 14 days ; or (3) stoppages. These punishments are equivalent to Court-Martial convictions or Commanding Officer's punishments, as the case may be. In the event of the Naval and Military Commanding Officers not agreeing as to the disposal of the case, the offender will remain in arrest until the matter can be referred to superior authority. The Captain of the ship must give the Commanding Officer of the troops written authority to award certain minor punishments specified in the Summary Punishment Table annexed to the Order in Council. Three of these relate to stoppage of smoking and answering at roll calls with varying frequency, and correspond to confinement to barracks ; the others are fines for drunkenness and extra guards, corresponding to the same punishments on shore. As far as is consistent with the discipline of the ship, the troops are to be managed by their own Officers, and orders are to be conveyed through them.

Man., pp. 728—733.

The command of the troops on board any ship will as a rule be vested in the senior combatant Officer doing duty, and an Officer senior to him, who happens to be on board as an indulgence passenger is only to assume command if a serious emergency arises. The responsibility for deciding whether such an emergency exists will rest upon this latter Officer. **K.R.. 1576.**

On board a King's ship the Commanding Officer's powers would be limited as described above ; but on board a trans-

port he would have all the powers of a Commanding Officer, and if he had a warrant enabling him to do so he could convene a District Court-Martial. A Commanding Officer of any rank could convene a Regimental Court-Martial.

s. 47 (1).

Whenever troops are embarked on board any ship, whether a King's ship or a hired transport, they carry with them the military law to which they were subject at the port of embarkation, except that the sentence of any Court held on board ship may be confirmed at the place of disembarkation, as though the offender had been tried at this latter place.

s. 188.

CHAPTER XVI.

ENLISTMENT, Etc.

A soldier may enlist for twelve years, or for such shorter period as may be determined by regulation, **s. 76,** and this period may be either all Army service, or partly in the Army and partly in the Reserve, in such proportions as may be fixed by the Army Council * **s. 77.** Every person, on offering to enlist, must be given a Notice Paper by the recruiter, which paper contains the questions he will have to answer on attestation, the general conditions of the contract he is about to make with the Crown, and time and place where he will have to appear to be attested. **s. 80 (1).** A recruit can only be attested by a Justice of the Peace or by such Officers as the Army Council may, under the Act, authorize to attest recruits. **s. 94.** A detailed list of such Officers is given in the Recruiting Regulations. **R.R., 109.** It is the duty of the Justice to ascertain that the recruit assents to the enlistment, and is not under the influence of liquor; he will caution him as to the penalty for making false answers, and will see that he understands the questions, and that the answers are properly recorded. **s. 80.** The man is deemed to be a soldier on signing the attestation paper and taking the oath of allegiance; and his service counts from the date of attestation. **ss. 79, 80.**

Under the provisions of the Military Service Act, every male British subject resident in Great Britain, between the ages of 18 and 41, who was on the 2nd November, 1915, unmarried or a widower without children, is (with certain exceptions) deemed to have been enlisted on 2nd March, 1916, for General Service for the period of the war, and to have been forthwith transferred to the Reserve. **M.S. Act, s. 1.** A Tribunal can grant an "exemption," which may be absolute, conditional or temporary, or from combatant service only. **M.S. Act, s. 2 (3).** On being called up men who

* During the present war men may also enlist for the period of the war.

are not exempted report to the Recruiting Officer of their area, by whom they are enrolled and passed to the Depôt of the Regimental District, where they are posted to the unit they are ordered to join. Men who fail to report when called up commit an offence against the Reserve Forces Act, but they cannot be sentenced to death.

M.S. Act, s. 1 (2).

Aliens may be enlisted provided that there are not more than two per cent. serving together in any Corps ; but an alien cannot hold any higher rank than that of Warrant Officer. **s. 95 (1)** An alien cannot plead that he is such as a plea to the jurisdiction of a Court before which he is arraigned.

If a man has received pay for three months from enlistment or re-engagement he cannot claim his discharge on account of any error or illegality in his enlistment or re-engagement, but if the claim is made within three months and is substantiated he will be discharged as soon as possible.

s. 100.

An apprentice who has absconded and enlisted, concealing the fact, can be claimed by his master, if he is under twenty-one years of age, and if he was bound by a regular indenture for not less than four years and was under sixteen when so bound ; and provided the master has within one month of his absence, made the oath prescribed in the First Schedule of the Army Act, before a Justice of the Peace.

s. 96 ; First Sch.

A soldier may, under certain conditions, *extend* his service, *i.e.*, remain on with the Colours instead of being transferred to the Reserve. **s. 78 (1).** The detailed regulations, relating to extension of service, are laid down in K.R., paras. 262, 263. On the other hand, the Army Council may allow a man to convert his Colour service into Reserve service, and thus be transferred to the Reserve sooner than he had agreed on enlistment.

s. 78 (1) ; s. 4 ; K.R., 367—370.

A soldier may, after nine years' service, be permitted to *re-engage* to complete a total of twenty-one years' Army service, under such regulations as may be made by the

Army Council. The present regulations in force as to re-engagements are laid down in K.R., 264—269. Such soldier must sign a re-engagement paper. **s. 84.**

Men who have completed, or are within a year of completing, twenty-one years' service, may, with the sanction of the Officer in charge of records concerned, *continue* in the Service, subject to their right to claim their discharge at any time after giving three months' notice. A Commanding Officer may accept a shorter notice, if he thinks it in the man's interest to do so; and, on the other hand, can discharge the man at any time, but should ordinarily give him a month's notice before doing so.

s. 85: K R., 270—272

Prolongation of Service means the detention of a soldier in Army service for any period, not exceeding twelve months, after the date at which he would be entitled to be transferred to the Reserve or discharged. A soldier's service may be thus prolonged when:—

(i.) A state of war exists.

(ii.) He is on service beyond the seas.

(iii.) The Reserves are called out. **s. 87.**

During the present war a soldier's services may be thus prolonged for the duration of the war.

M.S., Act. (Sess. 2). s. 2.

Transfer is the term applied when a soldier is moved from the Corps in which he is serving to another Corps, or to the Reserve. *Posting* is the term applied to the movement of a man from one part of his Corps to another part, as from one Battalion to another, or to the Depôt, or the Permanent Staff of a Battalion of the Territorial Force; this can be done without the man's consent. **s. 82 (2)**, *note*. A soldier can be transferred at any time with his own consent. He can only be transferred to another Corps without his consent under the following circumstances:—

(1) When enlisted for general service, he may, within three months of his attestation, or at any time

while the Army Reserve is called out on permanent service, be transferred to any other Corps of the same arm of the Service.

(2) When he has been invalided from abroad, or when his Corps is ordered abroad and he is, on account of ill-health, unfit to go with it, or is within two years of the termination of his service.

(3) When he is serving abroad and his Corps is ordered home, and he has more than two years to serve, unless he has extended his service.

(4) When he has been convicted of desertion or fraudulent enlistment, or his trial for these offences has been dispensed with; or when he has been sentenced by Court-Martial to not less than three months' detention he is liable to general service in commutation, either wholly or partly, of any other punishment.

(5) When delivered into military custody or committed as a deserter by a Court of Summary Jurisdiction.

s. 83; A. (Amend.) Act, s. 1 (1).

During the present war men may be transferred without their consent to any other Corps, but they retain their previous pay and allowances if more advantageous than the new rates, except where the Army Council direct to the contrary, and at the conclusion of the war can claim to be re-transferred to their former Corps.

A. (Trans.) Act, s. 1; M.S. Act (Sess. 2), ss. 13, 14.

A soldier is entitled to be *discharged* on the termination of the period for which he engaged or re-engaged, except when his service has been prolonged, as explained above. If he is serving abroad at the time, he is entitled to be sent home to the United Kingdom, if he enlisted at home.

s. 90 (1), (2).

A recruit may *claim* his discharge on payment of £10 at any time within three months of his attestation, unless the Reserves are called out. **s. 81.** Other soldiers may be *permitted* to purchase their discharge on payment of a sum varying from £18 to £35. **R.W., 1130.**

The Crown at all times has the right to discharge a man whose services are no longer required ; the various classes of discharge are dealt with in K.R., para. 392.

s. 92 (*note*).

A discharge certificate, stating the reason for his discharge, must be given to every soldier on discharge. If lost a copy will not be given. s. 92 (2) ; K.R., 415, 423.

Questions.

1. Explain a "Notice Paper."
2. Explain the following terms :—Extension of Service ; Re-engagement.
3. Under what circumstances can soldiers, without their own consent, be transferred to a Corps other than that to which they were first appointed ?
4. Explain the meaning of the following terms :—Continuance in the Service ; Prolongation of Service.

CHAPTER XVII.

MISCELLANEOUS.

(i.) Exemptions of Officers and Soldiers.

All Officers and soldiers of the Regular Forces (which term includes Marines, Indian Forces, and Auxiliary Forces when subject to military law,) on duty are exempt from payment of any tolls or duties fixed by Act of Parliament, when embarking or disembarking at any landing place, or when passing over any turnpike road or bridge. A like exemption extends to their horses and baggage, all soldiers under military escort, and all carriages belonging to the Crown or employed in military service in conveying any of the above-named persons or baggage, or on returning from conveying the same. This exemption does not extend to boats or barges. It is not a personal one, and only applies when Officers or soldiers are on duty, and a recent case has decided that an Officer living out of barracks for his own convenience is liable to pay toll when passing between the barracks and his residence. **s. 143.** This section does not exempt troops from paying fees charged by owners for permission to pass over their private property. It can be seen, by referring to the notice board at the gate, whether a toll is authorized by Parliament. **K.R., 1419.**

No soldier can, by any process of law, be taken out of the Service, or compelled to appear personally (otherwise than as a witness) in any case, except :—

(*a*) On a charge of, or conviction for, crime ;

(*b*) On account of a debt exceeding £30 over and above the costs of the action.

A crime means a felony or misdemeanour, and does not include breach of contract. This exemption is, of course, only personal, and does not prevent a soldier being sued for

money owed by him. **s. 144.** This exemption does not extend to an Officer who remains liable in the same way as a civilian.

An officer or soldier cannot charge or assign his pay or pension for the payment of any debt. Under the Bankruptcy Act, 1883, the approval of the Army Council must be obtained before any pay of an Officer can be set aside, and it has been ruled that the pay of an Officer on the active list should not be so appropriated. If an Officer becomes a bankrupt the Army Council will decide whether he may retain his commission.

s. 141 and *note 3*; **K.R.. 477**; **Clode, Vol. II., pp. 105–107.**

Officers on full pay are, by the Juries Act, 1870, exempt from serving on juries in the United Kingdom, **33 & 34 Vict., c. 77, s. 9**; and soldiers are, by the Army Act, similarly exempt anywhere. **s. 147.** Officers and men of the Territorial Force are also exempt at all times from serving on any jury. **T. & R.F. Act, s. 23. (4).** This exemption must, however, in England and Wales, be claimed when the jury lists are made out annually in September, or they will be bound to serve if summoned. **33 & 34 Vict., c. 77. s. 12; Man.. XII., 8,** *note.*

Officers of the Army and Officers and men of the Territorial Force are further exempt from serving in any municipal office, and indeed are expressly disqualified by the Army Act from holding certain civil and municipal offices.

s. 146; **T. & R.F. Act, s. 23 (4)**; **Man., XII., 8.**

Officers are moreover exempt from paying licence duty for their soldier servants, or servants employed by them under Army Regulations. **Man., XII., 5.**

Officers and men dying on active service can, as regards their personal property, dispose of it by what is called a *nuncupative* will; *i.e.*, it need not be made in writing or executed with the usual formalities. Probate of the wills of soldiers dying in the Service are exempt from probate duty. If the surplus of the personal effects of an officer or soldier, after paying the preferential charges, is less than £100, no duty is payable thereon.

R D Act, s 16: **Man., XII., 4**; **Clode, Vol. I., p. 212.**

(ii.) Liability to Maintain Wife and Children.

A soldier is, like any other citizen, liable to maintain his wife and children, and also any illegitimate children, of which he is proved the father, but execution for such maintenance cannot be levied on his military effects, neither can he be punished for deserting his wife and family, or for leaving them chargeable to the parish. If a decree is made against a soldier by any Court for the maintenance of his family, a copy is sent to the Secretary of State, or any Officer deputed by him to receive such notice.

These authorities, on receipt of the decree, or on being satisfied that the soldier has left his wife, or children under fourteen years of age, destitute, may order a daily stoppage from the man's pay, not exceeding 1s. 6d. for wife or child, or 1s. for an illegitimate child in the case of a Warrant Officer (Class I.) not holding an honorary commission, and not exceeding 1s. or 7d. respectively, in the case of a Warrant Officer (Class II.), or a Non-Commissioned Officer of the rank of Serjeant or upwards, and not exceeding 6d. or 4d. respectively in the case of all lower ranks. These amounts cannot be exceeded, but must be apportioned between the wife and children (if necessary) by the Army Council. **ss. 138 (8), 145 (1), (2); A. Ann. Act, ~~1913, s. 6~~ 1918 s. 10 ~~A. Amend Act No. 2, s. 4.~~**

If a man has made a false answer on attestation as to his being married, and the Parish Authorities claim him for wife desertion, and send a constable with a warrant, the Commanding Officer will discharge him and hand him over to the constable. If the Parish do not take the above steps, the Commanding Officer will apply to the Brigade Commander for authority to stop the man's pay, for the maintenance of his wife and family, as above stated. If the wife, within six months of his attestation, claims him, the Commanding Officer can either take steps to enforce the stoppage of pay, or to have him tried by a Civil Court for making a false answer, and, on conviction, discharge him. If more than six months have elapsed since his attestation before his wife claims him, the Commanding Officer will tell her he can only be discharged, if the Parish act as above described, but her claim for alimony will be referred to the Brigade Commander for authority to make the usual stoppage. **99; K.R., 392 (vii.).**

(iii.) Liabilities of Civilians.

In addition to penalties for infringing the law relating to billeting and the impressment of carriages, which will be dealt with in Chapter XIX., civilians are liable to punishment by the ordinary Civil Courts for certain offences stated in the Army Act.

These offences and their penalties may be summarized as follows :—

(*a*) Unlawfully interfering with recruiting ; *punishment*, a fine not exceeding £20. **s. 98.**

(*b*) Making a false answer on attestation ; *punishment*, imprisonment not exceeding three months. **s. 99.**

(*c*) Making a false oath in respect of any pension or other payment by the military authorities ; *punishment*, as for perjury, *i.e.*, seven years penal servitude. **s. 142 (1).**

(*d*) Falsely pretending to be any man in the Regular, Reserve or Auxiliary Forces ; *punishment*, imprisonment not exceeding three months, or a fine not exceeding £25. **s. 142 (2), (3).**

(*e*) Pretending to be a deserter ; *punishment*, imprisonment not exceeding three months. **s. 152.**

(*f*) Persuading or assisting a soldier to desert ; *punishment*, imprisonment not exceeding six months. **s. 153.**

(*g*) Trafficking in commissions ; *punishment*, a fine of £100 or imprisonment not exceeding six months. **s. 155.**

(*h*) Buying, exchanging, pawning, etc., any military equipment, officer's or soldier's kit, etc., or enticing or helping any officer or soldier to so deal with such things ; *punishment*, ~~first offence~~ : ~~fine not exceeding £20, together with treble the value of the property ; second offence~~, fine not less than £5 and not more than £20, together with treble the value of the property, or imprisonment not exceeding six months. **s. 156 (1) ; A. Amend. Act, No. 2, s. 6.**

(*i*) Where any such property is found in a person's possession, unless he can satisfy the Court he came into possession lawfully; *punishment*, fine not exceeding £5. s. 156 (2).

(*j*) Detaining the identity, or life, certificate of a pensioner, or Army Reserve man, as security for debt, renders a person liable to a like penalty as for an offence under (*h*). s. 156 (9).

Any witness who is duly summoned to attend a Court-Martial, and who, after payment or tender of his expenses, fails to attend, or to be sworn, or to give evidence, and any person guilty of contempt of Court towards a Court-Martial, may be dealt with by an ordinary Civil Court for contempt as though the offence had taken place before the latter Court. Any witness giving false evidence before a Court-Martial, commits perjury, and is liable to be dealt with by a Civil Court for this offence. s. 126.

(iv.) Definitions.

"*On Active Service*" means whenever a person forms part of a force

(1) engaged in operations against the enemy;

(2) engaged in military operations in a country wholly or partly occupied by the enemy; or

(3) in military occupation of any foreign country.

Whenever, by reason of the imminence, or recent cessation, of hostilities, the Governor of a Colony, or General Officer Commanding the Forces out of the King's dominions, considers it expedient, he may declare that the troops are to be deemed on active service for any period not exceeding three months; this period can be renewed from time to time if still necessary. If the Governor or General is in telegraphic communication with the Secretary of State, he must first obtain his consent; in other cases he must report his action, as soon as possible, to this Minister, who can, if he thinks fit, annul the declaration, without prejudice to anything that has taken place under it. s. 189.

An "*Officer*" is any person in pay, or commissioned, as such in any part of His Majesty's Forces, and includes any person, whether retired or not, who, by virtue of his commission, is entitled to the style of Officer of His Majesty's Forces. Warrant and other Officers holding *honorary* commissions are Officers within the meaning of the Act. **s. 190 (4).**

A "*Non-Commissioned Officer*" includes acting Non-Commissioned Officers and Army Schoolmasters, but, except as mentioned in the Act, does not include Warrant Officers. **s. 190 (5).**

A "*Soldier*" does not include an Officer; but includes every one else subject to military law, with certain modifications* in the case of Warrant and Non-Commissioned Officers. **ss. 182, 183, 190 (6).**

A "*Superior Officer*," used in relation to a soldier, includes Warrant and Non-Commissioned Officers. **s. 190 (7).** It also includes Officers or Petty Officers of the Navy acting with or attached to Military Forces under the conditions prescribed by the Admiralty and Army Council.† **A. (Amend.) Act; s. 4.**

"*Regular Forces*" mean those who are liable to serve continuously for a term in any part of the world, including the Reserve Forces when called out on permanent service, the Royal Marines, and the Indian Forces. The two last with the modifications mentioned in the Act, *vide* pp. 10, 12. **s. 190 (8); R.F. Act, s. 28.**

"*Reserve Forces*" mean the Army Reserve and the Militia Reserve. **s. 190 (9).**

"*Auxiliary Forces*" mean the Territorial Force, Militia, Yeomanry, and Volunteers. **s. 190 (12).**

A "*Corps*" means any military body, whether known as a Territorial Regiment, or by any other name, as may from time to time be declared by Royal Warrant to be a Corps, and may consist entirely of Regulars, or

* For these modifications *vide* pp. 11, 12.

† The relative rank of Naval and Military Officers, Petty Officers, and Non-Commissioned Officers is provided for by King's Regulations. **A. (Amend.) Act.; s. 4 (3).**

either kind of Auxiliaries, or mixed. The Royal Warrant now in force was issued 12th July, 1916.

s. 190 (15) ; **A.O.** $\frac{250}{16}$.

A "*Military Decoration*" means any medal, clasp, good conduct badge, or decoration. **s. 190 (18).**

A "*Military Reward*" means any reward for long service or good conduct, and includes good conduct pay, pension, and any other pecuniary reward. **s. 190 (19).**

"*Enemy*" includes all armed mutineers, armed rebels, armed rioters, and pirates. **s. 190 (20).**

A "*Native of India*" means a person triable under Indian Military Law. **s. 190 (22).**

A "*Colony*" means any part of His Majesty's dominions, exclusive of the British Islands and India.

s. 190 (23).

A "*Foreign Country*" is any place not situate in the United Kingdom, India, or a Colony, and not on the high seas. **s. 190 (24).**

"*Beyond the Seas*" means out of the United Kingdom, the Channel Islands, and the Isle of Man. **s. 190 (25).**

A "*Court of Summary Jurisdiction*" means a Police or Stipendiary Magistrate, or two Justices ; or, in Scotland, the Sheriff or Sheriff Substitute.

A "*Summary Conviction*" means a conviction by any such Court. **s. 190 (35)** ; and *note*.

"*Horse*" includes mule and every kind of beast of burden or draught. **s. 190 (40).**

In the Act, masculine words include feminine ; the plural includes the singular, and the singular the plural ; month means a calendar month ; a year means twelve calendar months, and may commence on any day. This, however, only applies to Acts of Parliament, but not to documents. By the Rules of Procedure the term "month" in a sentence means a calendar month.

s. 190, *note 1* ; **Interpretation Act, 1889, ss. 1, 3 ; R.P., 134 (c).**

(v.) Company Conduct Sheets.

A guard book containing sheets for every Non-Commissioned Officer under the rank of Colour-Serjeant and man in the company, is to be kept by the Captain in his

own possession. In it is to be recorded every offence committed by any man for which punishment has been awarded or reprimand administered, except offences, other than drunkenness, for which confinement to barracks for one day, or its equivalent punishment on board ship, has been awarded. Admonition will only be entered in cases of drunkenness or those involving forfeiture of pay. Every case of drunkenness will be entered in black ink and numbered consecutively in red ink in the column set apart for that purpose. Every case of admission to hospital through alcoholism is to be entered in red ink. The officer who makes an entry is to initial it in the last column.

K.R., 1924.

During the present war this sheet is only used for men of the regular forces serving at home or abroad, elsewhere than with the Expeditionary Forces, and is not made out for a man until he incurs an entry.

The following rules are to be observed in making entries:

(i.) In trials by Court-Martial the "statement of offence" is to be entered, and when there is more than one charge, they are to be numbered. When the statement of offence does not disclose the full nature of the offence the "particulars" of the charge will be given.

e.g. "Neglecting to obey garrison orders—being out of bounds";

"Conduct to the prejudice of good order and military discipline—gambling with privates."

(ii.) Vague entries, such as "improper conduct," are to be avoided.

(iii.) No date or place is to be entered in the "offence" column, unless there are two, as the "date" or "place" columns show these when there is only one.

(iv.) Confinement to barracks is entered as *C.B.*

Imprisonment with hard labour as *Impt. H.L.*

Detention as *Detn.*

Fine as *fined*,—

Penal Servitude as *P.S.*

Deprived of lance stripe as *Depd. Lce. Stripe.*

(v.) *Detention*, when awarded by the Commanding Officer, is entered in hours up to seven days, inclusive; when over seven days, it is entered in days.

(vi.) The date of a summary award, or the original sentence of Court-Martial, is to be entered in the column "date of award."

(vii.) Forfeiture of pay (when forfeited by Royal Warrant), service pay, or a good conduct badge is to be noted in the column of "Remarks" as "*Forfeits.....days' pay*," or "*Forfeits G.C.B.*"

K.R., 1919, 1920; R.W., 977.

All entries in the Conduct Sheets will be compared frequently by the Commanding Officer with the awards in the guard reports and minor offence reports. **K.R., 1924**

In each guard book a specimen sheet is to be kept for guidance in making entries, together with an alphabetical roll of all the sheets in the portfolio. When a sheet is temporarily taken out the date and reason for such removal is to be noted in pencil against the man's name. **K.R., 1924.**

If a sheet is lost a Court of Inquiry is to be at once assembled by the Commanding Officer to investigate the circumstances, and to take evidence as to the number and nature of the entries of the lost sheet. A new sheet will then be made out in accordance with the evidence then obtained, and the Commanding Officer will authorize its being substituted for the one lost. A note in red ink "Substituted for original, lost," with date and Commanding Officer's signature, will be made in front of "number of sheet." **K.R., 1921.**

On promotion to Colour-Serjeant or higher rank, a man's Company Conduct Sheet will be destroyed, after the entries necessary for assessing his character or claim to good conduct medal have been transferred to his Regimental Sheet.

When a man is discharged, his Company Conduct Sheet will be destroyed, a record will, however, be kept of deprivation of lance stripe, severe reprimand of Non-Commissioned Officers, admission to hospital through alcoholism, and all cases of drunkenness incurred before 1st February, 1907. If a man's sheet contains any entries, it will also be destroyed and a blank one substituted :—

(*a*) On completion of six months' service from attestation.

(*b*) After every continuous period of two years without an entry.

(*c*) On promotion to serjeant.

(*d*) On transfer to the reserve.

When a new sheet is taken into use the Captain will make and sign an entry at the top. "Sheet destroyed (date) ; last entry (date)." Before destroying the old sheet the heading in the new one will be compared, and the entries in the Regimental Sheet checked. **K.R., 1925.**

When a man dies his Company Conduct Sheet will be destroyed. **K.R., 1929.**

When a unit goes on active service the Company Sheets will be forwarded to the Officer i/c Records, and at the conclusion of the campaign or when the man returns home will be completed from entries in the Field Conduct Book, furnished by the unit in the field. **K.R., 1926.**

(vi.) Regimental Conduct Sheets.

A sheet for every Non-Commissioned Officer and man is to be kept with his duplicate attestation, except those of Non-Commissioned Officers of the rank of colour-serjeant and upwards, which will be kept as "confidential." The following entries will be made therein :—

(i.) Every conviction by Court-Martial.

(ii.) Every case of desertion or fraudulent enlistment when trial has been dispensed with, the authority and date of order to be entered.

(iii.) Every conviction by a Court of ordinary criminal jurisdiction, or by a Court of Summary Jurisdiction. But when no punishment has been awarded on conviction by either of these Civil Courts, and also when the sentence of a Court of Summary Jurisdiction is a fine, and the offender has not been imprisoned in default of payment, the Commanding Officer may, if he thinks fit, apply to an Officer not below the rank of Brigadier-General for authority not to make a regimental entry.

(iii*a*.) Every case in which a soldier has been bound over by one of these Courts to appear for conviction or judgment. But if the Commanding Officer thinks a regimental entry should not be made, he may refer the case to an Officer not below the rank of Brigadier-General.

(iv.) Every severe reprimand of a Non-Commissioned Officer.

(v.) Every case of reduction of a Non-Commissioned Officer, or deprivation of lance stripe for an offence; not for inefficiency.

(vi) Every award of detention by the Commanding Officer.

(vi*a*.) Every award of field punishment by the Commanding Officer (on active service).

(vi*b*.) Every award of forfeiture of pay by the Commanding Officer (on active service).

(vii.) Confinement to barracks exceeding seven days.

(viii.) Every case of drunkenness.

(ix) Every award on board H.M. Ships declared by the Regulations for Troopships to be equivalent to a regimental entry.

(x.) Every offence entailing forfeiture of pay except (*a*) where the offence is absence not exceeding two days, (*b*) when the forfeiture is in consequence of a civil conviction, and no entry has been made under (iii), or (*c*) when the offence was committed before enlistment. Stoppage of smoking on board ship exceeding seven days.

(xi.) Any punishment awarded by visitors in a military or naval prison or detention barracks; by the visitor in a branch detention barrack, when so directed by the Officer awarding the punishment; and by the visiting committee in a civil prison.

(xii.) Every conviction under Reserve Forces Act, 1882, s. 6, of an Army Reserve man.

(xiii.) Every admission to hospital through alcoholism.

(xiv.) Any special act of gallantry.

These last two entries are to be made in red ink.

K.R., 1919.

The rules as to the manner in which entries are to be made; and for the disposal of the sheet in the case of the death, desertion, or discharge of the soldier; and the action to be taken in the event of a sheet being lost are the same as those given in the last section for the Company Sheets.

K.R., 1920. 1921, 1929.

When a unit proceeds on active service all Regimental Conduct Sheets will be forwarded to the Officer i/c Records concerned, and at the conclusion of the campaign or when the man returns home will be completed from the entries in the Field Conduct Sheet. K.R., 1922.

Certified copies of all convictions by the Civil Power will be attached to the Regimental Conduct Sheet. When the imprisonment exceeds seven days, the record will be produced in evidence in the same manner as a Court-Martial conviction; when the imprisonment is under seven days, the conviction counts as an ordinary regimental entry.

K.R., 1919.

The rules for the use of this sheet during the present war are the same as those for the Company Conduct Sheet (*vide* p. 180); except that if a soldier of the Territorial Force incurs a Court-Martial entry, a Regimental Conduct Sheet is made out for him.

(vii.) Field Conduct Book.

On active service in the field all entries of offences will be made in the Field Conduct Book.

The book will contain a nominal list of the men of the company, &c., with an assessment by the Company Commander of their respective characters at the commencement of the campaign, number of cases of drunkenness, with date of last instance, &c.

If a man be transferred, while in the field, to another unit, it will be sufficient if he be accompanied by a memorandum showing an assessment of his character up to date of transfer and the total number of cases of drunkenness recorded against him, with the date of last entry. If the character is not satisfactory a short explanatory note may be added, *e.g.*:—

No.——, Pte.————. Previous cases of drunkenness, eight. Last offence, 17.3.06. Last case of drunkenness, 22.2.06. Character, bad. Insubordinate.

At the conclusion of the campaign or when a man dies or returns home his Field Conduct Sheet will be sent to the Officer i/c Records. K.R., 1927.

~~In the Territorial Force serving at home or abroad~~ this sheet will be used instead of the Company Conduct Sheet.

Questions.

1. (*a*) When is a person who is subject to military law considered to be on "active service" within the meaning of the Army Act?

   (*b*) What classes of persons are included in the expression "enemy" as used in the Army Act?

CHAPTER XVIII.

CUSTOMS OF WAR.

The Customs of War are those principles and rules which have gradually grown up from the dark ages to the present time for regulating the conduct of war between two belligerent States. As civilization has advanced, the method of carrying on war has become more humane, and by the general consent of civilized nations certain recognized rules have been adopted. These customs differ from an ordinary law in that there is no tribunal which can enforce them or punish an infraction of them; but most of them have become, either by long usage, or in many cases by express convention, so well established, that no Power would dare incur the just odium of the rest of the civilized world by doing anything contrary to them. Several Conventions and Conferences have from time to time been attended by most of the Great Powers with a view to drawing up definite rules on different subjects connected with carrying on warfare. Such among others have been:—

1. *The Geneva Convention*, for the amelioration of the condition of the wounded, held in August, 1864.
2. *The Declaration of St. Petersburg*, as to explosive bullets, signed 11th December, 1868.
3. *The Brussels Conference*, on the Customs of War, held in 1874; but which was never ratified.
4. *The Peace Conference at the Hague*, held, on the initiation of the Emperor of Russia, from 18th May to 29th July, 1899.
5. *The Geneva Convention*, for the amelioration of the condition of the wounded, signed 6th July, 1906.
6. *The Second Peace Conference at the Hague*, held in 1907. **Man., XIV., 4; Holls, pp. 36, 134, 335.**

This Second Hague Conference considered the existing Customs of War, and to complete the work of the First Conference drew up a Convention concerning the Laws and

Customs of War on Land, which was signed on the 18th October, 1907, by the Plenipotentiaries of forty-two states, and has since been ratified by seventeen of the great Powers represented at the Conference, and which replaces the Convention of the First Conference, signed on the 29th July, 1899. The rules therein laid down are expressly declared to be binding on the Signatory Powers, in case of war between two or more of them (unless either side has a Non-Signatory Power as an ally) until a year after any Power may declare its intention to renounce the Convention. It was further agreed that each Power should issue to its Army, "Regulations for the Conduct of War." This has been done in the case of our Army by the issue from the War Office of a small book "Land Warfare," 1912.

Man., XIV., App. 6.

At the same time three other Conventions were signed by various representatives of the Great Powers respecting, (i.) The Opening of Hostilities; (ii.) Bombardments by Naval Forces; and (iii.) The Discharge of Projectiles and Explosives from Balloons. **Man., XIV., App. 5, 8, 9.**

A Convention concerning the rights and duties of Neutrals, although signed by the British representatives, with certain reserves, has not yet been ratified by Great Britain. **Man., XIV., App. 7.**

The principal points touched on in these Conventions will now be considered separately.

(i.) Belligerents.

By a recognized principle of International Law every subject of one of the belligerent States is, from the moment war is declared, the enemy of every subject of the other and all intercourse between them is at an end till the war is over. In practice, however, this strict principle is much modified, and in modern times the subjects of one State have been permitted to remain in the territory of the other, and even carry on their ordinary occupation, provided they do nothing to interfere with the conduct of the war.

Man. XIV., 11, 14, 15; Hall, sec. 126.

In olden days war was commenced by a solemn and formal declaration of war made to the other Power; but the tendency of modern practice is for the first acts of war to be contemporaneous with this declaration, and in many cases it has been omitted altogether. By the Convention relating to the opening of hostilities, mentioned above, it is now compulsory on all the Signatory Powers to give due warning before actually commencing hostilities, though no period of delay is fixed, and therefore sudden warnings, followed by immediate action to surprise an unready enemy, are still possible. In this country the commencement of war is announced by a Royal Proclamation, posted in the City of London. **Man., XIV., 8; Hall, sec., 123.**

Although, as just stated, all subjects of an enemy State are, strictly speaking, enemies, in practice they are divided into two classes, viz.:—(1) the enemy's armed forces, and (2) the unarmed population. With the latter, so long as they do nothing of a hostile character, the troops of the other belligerent will not interfere. The armed forces of course include the regular army, militia, and volunteers of the State, which are usually regularly organized and wear a recognized uniform. It has, however, always been a disputed point, how far hastily raised levies and volunteers assisting the regular troops of their country are entitled to be recognized as regular combatants. It has now been decided that these irregular troops will be entitled to be so recognized provided the following conditions are fulfilled:—

(1) They must be commanded by a person responsible for his subordinates.
(2) They must have a fixed distinctive emblem recognizable at a distance.
(3) They must bear arms openly.
(4) They must conduct their operations in accordance with the Customs of War.

A further concession is made to a *levée en masse* of the population of a territory not under occupation, who take up arms to resist the invader, and who, though they have not time to organize as above, yet act in strict accordance with the Customs of War as laid down in (3) and (4) above.

Man., XIV., 20; Hall. secs. 176–179; Holls. p. 141.

Troops formed of coloured individuals belonging to savage tribes must not be employed in war between civilized States. The employment of disciplined troops belonging to civilized coloured races is legitimate, *e.g.*, our own Indian Army, the African regiments of the French Army, and the Negro regiments of the United States Army. **Man., XIV., 38.**

(ii.) Means of Carrying on War.

The right of belligerents to adopt means of injuring the enemy, is not unlimited; and the following are expressly prohibited :—

(*a*) To employ arms, projectiles, or materials of a nature to cause unnecessary injury;
(*b*) To employ poison or poisoned arms;
(*c*) To deliberately contaminate the enemy's water supply.
(*d*) To treacherously kill or wound individuals belonging to the hostile nation or army;
(*e*) To declare that no quarter will be given;
(*f*) To kill or wound an enemy who has laid down his arms, or has surrendered;
(*g*) To make improper use of a flag of truce, the national flag, or military ensign, or the enemy's uniform, or the distinctive badges of the Geneva Convention (*vide* p. 194).
(*h*) To destroy or seize the enemy's property, unless such destruction or seizure is imperatively demanded by the necessities of war.

Man., XIV., 42—51, 152. 408, 434; Holls., pp. 151, 152; Hall, secs. 129 184, 185, 187.

With reference to (*a*) it was decided by the Declaration of St. Petersburg in 1868, that the employment of an *explosive* bullet of less than 400 grammes (a little more than 14 oz.) should be unlawful; and at the first Peace Conference at the Hague it was further agreed by several of the Powers, to which agreements Great Britain and other Powers have since acceded, to abstain from *expansive* bullets, or the use of projectiles diffusing an asphyxiating or deleterious gas.

Man., XIV., 41, App. 2, 3; Holls., pp. 455, 459, 461.

Great Britain, the United States, and twenty-five other Powers further agreed at the Second Hague Conference in 1907 to abstain until the close of the next Conference from discharging projectiles or explosives from balloons or aircraft. This Declaration has not, however, been signed by France, Germany, and other great military Powers.

Man., XIV., 41, App. 9.

Train wrecking and firing camps or military depôts are legitimate when done by members of the armed forces.

Man., XIV., 45.

The attack or bombardment of undefended towns, villages or houses is prohibited. Before commencing a bombardment, except in the case of an assault, the Commander should give warning to the authorities, and will as far as possible spare buildings devoted to religion, art, or charity, and hospitals and places where sick and wounded are collected, provided these are not used for military purposes These should be indicated by some distinctive mark. The pillage of a town taken by storm is absolutely prohibited. It is an extreme measure, but the Commander of a besieging force is quite justified in driving back the inhabitants of a besieged town, whom the garrison may have turned out with a view to economising provisions.

Man., XIV., 117, 122, 124, 125 129. 133 136, 138; Holls. pp. 152, 153.

Ruses of war and the employment of methods necessary to obtain information are permissible, provided they are free from treachery. The use of the enemy's uniform is forbidden, and troops captured wearing it could be treated as "war criminals." If, owing to want of clothing, it becomes necessary to wear uniforms captured from the enemy, the distinctive badges should be removed.

Man., XIV. 139, 152, 154, 155.

(iii.) Spies and Stratagems.

A spy is one who is found in the zone of operations of a belligerent, with the object of obtaining information clandestinely and in disguise, which he intends to communicate to the enemy. Soldiers in uniform, no matter how cautiously

they may penetrate the enemy's lines, are never liable to be considered spies; neither are civilians who are carrying out their mission openly. During the Franco-German War of 1870-71, the Germans wished to treat persons passing over their lines in balloons, as spies; but it has now been definitely decided that such are not spies. It is lawful for a Commander to employ spies, but no one can be obliged to undertake the duty except voluntarily. A spy who is captured in the act is liable to be punished with death, but he must not be punished without a previous trial. A spy who has completed his mission and rejoined the forces to which he belongs, cannot, if subsequently captured, be punished for his previous conduct, but must be treated like any other prisoner of war.

Man., XIV. 145, 158. 161. 162 169, 170. Holls, pp. 153, 154; Hall, sec. 188.

As already stated, ruses of war are allowable, and any stratagem or means of deceiving the enemy which are not perfidious are permitted, such as false attacks, or the spread of false information, so as to mislead him as to the real intentions of the Commander. But no breach of an express or implied agreement that the truth should be spoken or acted on, can ever be justified; and as noted above, any improper use of recognized emblems is prohibited, and would be a gross breach of faith.

Man., XIV., 144—146; Hall, s. 187.

(iv.) Prisoners of War.

All members of the enemy's armed forces and followers, provided they can produce a certificate from their military authorities, are, when captured, entitled to be treated as prisoners of war, unless they have committed a "war crime." **Man., XIV., 56, 57.**

Prisoners captured by a belligerent must be treated humanely and only subjected to such confinement as is necessary to prevent their escape. **Man., XIV. 86. 87.** A prisoner attempting to escape may be killed in the act of escaping if necessary, but if retaken, is only subject to disciplinary punishment, not however extending to death, *e.g.*, he may in future be kept in closer confinement to

prevent a second escape. Prisoners who succeed in escaping are not, if again taken prisoners, liable to any punishment for their former flight. **Man., XIV., 74–78.** A general rising among prisoners or other acts of insubordination may warrant the adoption of such severity as may be necessary to repress them. Prisoners of war are subject to the regulations in force in the Army of the State which has captured them. **Man., XIV., 79. 85; Holls, pp. 145, 146; Hall, sec. 132.**

Prisoners of war are in the hands of the hostile Government, not those of the individuals who may have captured them. Their arms and other military equipment, may be taken from them, but their private property must be left to them. **Man., XIV., 66. 69.** The captor is bound to feed and support them; and as a rule the scale of maintenance should be equal to that of equivalent ranks in the Army of the State in whose hands they are. Officers must be given pay in addition at the same rate as that for Officers of corresponding rank in the captor's Army; but there is no obligation to pay other ranks, though this is sometimes done. **Man. XIV., 88 89 95.** A prisoner, if asked, is bound to disclose his true rank, otherwise he is liable to suffer a loss of the advantages granted to prisoners of his class. **Man., XIV., 67.** In return for this maintenance a State may utilize the labour of prisoners either in the public service or for private individuals, and the wages they earn go towards improving their condition, the balance being paid them on release. Prisoners cannot, however, be employed on any military work; nor can they be punished or ill-treated for not giving information as to the force to which they belong. Under our military code a prisoner of war voluntarily serving with the enemy is liable to death.

s. 4 (5); Man., XIV., 92—94, 147; Holls, pp. 145—147; Hall, sec. 132.

Non-combatants, such as newspaper correspondents, sutlers or contractors can claim to be treated as prisoners of war, if the capturing State thinks fit to detain them. A person who has violated the Customs of War by such acts as killing or robbing the wounded, has none of the rights of a prisoner of war, but may be punished with death.

Man., XIV., 57, 441, 450; Holls, p. 148; Hall, sec. 131.

Prisoners may be released on parole; but there is no obligation on a State to grant a parole, and no obligation on a prisoner to accept one. Indeed, unless the law of his country permits him, he is not at liberty to do so. A superior Officer may give a parole for himself and subordinates, but an inferior Officer may not do so without authority from his superior Officer if the latter is within reach. By English custom a private soldier can only give his parole through a Commissioned Officer. A prisoner, who is released on parole, is allowed to return to his own country on the understanding that he will not serve again against the same enemy during the same war. This does not prevent his services being employed in duties at home, such as drilling recruits, and he can serve actively in a separate campaign against a distinct enemy. A prisoner cannot promise never to serve again against the capturing State, as he cannot thus divest himself of his allegiance to his own Sovereign. A person, who breaks his parole and is retaken, is liable to death.

Man., XIV., 96–101, *and notes;* **Holls, pp. 147, 148: Hall, sec. 133.**

A Prisoners' Information Bureau must be established by each belligerent State, where a record is kept of all prisoners, and through which information concerning them is mutually exchanged. This bureau also takes charge of all personal effects found on battle fields or left by prisoners who have died or been released, and forwards them to the other Government. **Man., XIV., 102, 103, 105, 107.**

Prisoners of war are usually exchanged by an agreement between the respective States called a *Cartel;* but a belligerent has the right to refuse to exchange, and may keep his prisoners till the end of the war. Exchange is effected by releasing equal numbers of troops of corresponding ranks and quality, a larger number of inferior ranks or quality being given as an equivalent for fewer of a superior class. It is usual to release surgeons and chaplains, who may have been taken ministering to the wounded, without demanding any equivalent for them. Prisoners who have

been thus exchanged are of course free to take further part in the campaign. A ship employed in the conveyance of exchanged prisoners of war is called a Cartel Ship.

Man., XIV., 110, 111, 339; Hall, sec. 134.

(v.) Sick and Wounded.

Under the Geneva Conventions already referred to, the sick and wounded of the enemy are to be treated with the same care as those of the captor, but they are prisoners of war, though belligerents can agree to restore to each other the wounded left on a battle field. **Man., XIV., 175, 178.** Mobile military hospitals and ambulances, with their transport, together with the surgeons, nurses, and other attendants, including any guard, are considered neutral, and must be sent back to their own army or country, with all their private property, as soon as their services are no longer required. Such neutrality of course ceases if any of them are employed for purely military purposes. But the fact of their carrying arms or using them in defence of the sick and wounded does not destroy their neutrality. **Man., XIV., 184—187.** A distinctive flag and arm badge (a red cross on a white ground) have been agreed to, for use, in conjunction with the national flag, by all the Signatory Powers in their ambulance service in the field. **Man., XIV., 210, 212.** Wounded soldiers, who are incapable of further service, are to be sent to their own country as soon as their wounds allow.

Mobile medical units, which accompany an army in the field, retain their neutrality and must be restored when their personnel are sent back as stated above. Hospital buildings, on the contrary, can be captured, but are to be used as such as long as is necessary.

Man., XIV., 202, 205; Holls, p. 151; Hall, sec. 130.

The dead must be protected against pillage; and, before being buried, examined to see that life is extinct; their identification marks and any articles of personal value must be collected and sent through the Prisoners' Information Bureau to the authorities in their own country.

Man., XIV., 217—220.

(vi.) Intercourse between Belligerents.

Belligerents are from time to time necessarily brought into non-hostile relations with each other, the formalities connected with which have been arranged for. Such are capitulations, armistices, flags of truce, passports, safe conducts, etc. **Man., XIV., 221 223.**

The usual agents for such communications are known as *parlementaires*, whose duties include every form of communication, from the conveyance of a letter or message to negotiations for a capitulation. While performing these duties they must be under cover of a white flag, and are inviolable. **Man., XIV., 224–228.**

A capitulation is an agreement under which a besieged place, or a body of troops in the field, is surrendered to the enemy on stated conditions. Such agreement must be in accordance with military honour, and when once settled must be scrupulously adhered to by both parties. Commanders of forces in the field are invested with powers to agree to capitulations; but the exercise of these powers is limited by the necessities of the case and to the troops immediately under their command.

Man., XIV., 301. 306; Holls, p. 155; Hall, secs. 189, 194.

A suspension of arms, or an armistice, is an agreement made for a temporary suspension of hostilities either for a short time for some passing object, or for a longer time and over a wider area for some more general object. A Commander is deemed to have power to conclude an armistice delegated to him by his Sovereign, and this presumption is so strong that the Sovereign cannot repudiate the act of his Officer, though he can punish him for his conduct. **Man., XIV., 258–260.** A general armistice suspends all military operations between the belligerents; a local one only those between the troops within a named radius. **Man., XIV., 261, 263.** The conclusion of an armistice must be notified by Commanders to their troops in good time, and hostilities are at once suspended, or after an agreed time. In a large theatre of war, it would be advisable to fix an hour at which the armistice was to commence, in order to give time for its notification to reach scattered

bodies of troops. Too much care cannot be taken in precisely defining the commencement and termination of the truce, and also to state exactly what may or may not be done by the belligerents during its continuance. The generally accepted rule is, that neither side may profit militarily by a suspension of arms, and thus may not execute any military manœuvre, such as moving troops, repairing fortifications, or revictualling a besieged place, which would have been impossible for them had not the suspension of hostilities taken place. But such movements in rear of the respective armies, or interior works in a fortress, as could in any case be carried out without interruption by the enemy are not prohibited, and it would be only fair for the besieged to bring in an amount of food equal to that consumed during the armistice, as otherwise the garrison would be put to a disadvantage by the mere fact of the armistice existing.

Man., XIV. 273—283; Holls, pp. 155, 156; Hall, sec. 192.

A flag of truce is used when a belligerent wishes to enter into negociations with his enemy. The individual (usually an Officer) charged with this mission proceeds, accompanied by a trumpeter, or drummer, a person bearing a white flag, and an interpreter. All of these are inviolate and may not be captured; nor, although the enemy is not bound to receive the flag of truce, may they be turned back by being fired on after first being signalled to withdraw. **Man., XIV. 229. 234 237, 242.** If a white flag is hoisted during an engagement, the troops to which it belongs must cease fire, and if the enemy will receive it he must do the same; but he is not bound to cease firing at once, and the other party have no ground for complaint if the bearers of the flag of truce are killed. A belligerent has the right to take any steps necessary to prevent the abuse of a flag of truce, such as blindfolding the party before admitting them within the outposts, etc. In case of abuse he has the right to detain the bearers, or if it is being used to obtain information surreptitiously they are liable to be treated as spies.

Man., XIV., 230, 248; Holls, p. 154, 155; Hall, sec. 190.

Passports are written permissions, given by a belligerent to subjects of the enemy, whom he allows to travel without special restrictions in the territory under his control. Safe conducts are similar permissions under which persons to whom they are granted may proceed to a particular place for a specified object. The latter term is also applied to permission to remove goods. Either a passport or a safe conduct may be revoked by the authority who granted it, or his superior, whenever, in his opinion, its continuation would be injurious; but good faith requires that due notice of such resolution should be given to the grantee.

Man., XIV., 326, 328, 333; Hall, sec. 191.

(vii.) Military Occupation of Hostile Territory.

Territory is considered occupied when actually under the authority of the hostile forces, but the occupation is limited to places where the authority is actually established and able to assert itself. When such is the fact the authority of the local Government is supplanted by that of the Commander of the invading troops, who rules the country by what is called Martial Law. **Man., XIV., 341.** As a rule, if the local tribunals and officials are able to carry out their duties, they will do so under the orders of the Commander of the forces; but these may be supplemented or displaced by Military Courts and officials appointed by the invader, into whose hands all authority has passed, and who is responsible for the maintenance, as far as possible, of public order and safety. **Man., XIV., 360, 368.** While individuals may be punished in any way he decrees for breaches of regulations issued to ensure public order and the safety of the troops, no general penalty can be inflicted on the population for the acts of such individuals, for which the community cannot be regarded as collectively responsible. **Man., XIV., 384. 385.** The inhabitants cannot be compelled to take an oath of allegiance to the hostile Power, or to engage in any military operations against their own country. Family honour and rights, private property, and religious liberty must be respected. **Man., XIV. 356 383.** Pillage is absolutely forbidden, and all property belonging to municipalities, or religious, charitable or educational institutions

even when State property is to be treated as private property; while all seizure or damage to such institutions, or historical monuments, works of art or science, or State archives is prohibited. **Man., XIV., 407, 429, 431.** An army of occupation may, however, take possession of any cash or other funds belonging to the State, as well as all depôts of arms and other military stores, and may collect the usual taxes, etc., imposed by the State, out of which the expenses of the administration of the occupied territory will be defrayed. **Man., XIV., 430.** *Requisitions, i.e.*, provision of goods in kind, and *contributions, i.e.*, payment of specified sums of money, may only be levied on the authority of the Commander on the spot, if the necessities of the occupying army demand it, and must be proportionate to the resources of the country. A similar rule exists as to the enforced services of the inhabitants, which must never be of a nature to involve the population in taking part in military operations against their own country, as already noted.

Man., XIV., 416—425; Holls, pp. 156—160;
Hall, secs. 153—161.

PART II

CAPTAINS, FOR PROMOTION TO MAJOR.

[In Addition to Part I.]

CHAPTER XIX.

BILLETING AND IMPRESSMENT OF CARRIAGES.

(i.) Billeting.

All Officers and soldiers of the Regular Forces and their horses are entitled to be billeted, **s. 105**; and those of the Auxiliary Forces are similarly entitled when they are subject to military law. **s. 181 (3).**

The authority for demanding billets is the route, which is always required for the movement of troops, **s. 103**; or, in the case of the Auxiliary Forces, an order signed by their Commanding Officer. **s. 181 (4).** Routes are signed by the Secretary of State for War, giving general directions to move the troops as may be necessary, the particular movement being filled in as occasion requires and signed by the Staff Officer of the General Officer ordering it.

Man., IX., 127.

The actual billets are allotted by the civil police, who decide the number to be furnished by the different innkeepers and others who are liable. **s. 103.** The distribution of the troops among the billets thus allotted is carried out by the Military Authorities, care being taken to keep the men of each section, company, etc., as much together as possible, and to quarter the Officers near their men, and the men with their horses. **Second Sch.; K.R., 1416.**

The liability to furnish billets lies on all keepers of "victualling houses," and this term includes inns, hotels, alehouses, livery stables, places where spirits, etc., are sold by retail. Troops are, under ordinary circumstances, never to be billeted in private houses, canteens, or the residence of a Foreign Consul. **s. 104.** When the Territorial Force, or any part of it, has been embodied, however, the King, or in Ireland, the Lord Lieutenant, may declare that a case of

emergency exists, and may authorize any General or Field Officer to issue a billeting requisition, under which troops may be billeted in public buildings, dwelling houses, warehouses, barns and stables, as well as in "victualling houses." **s. 108 A.** Every person so liable is obliged to receive such Officers and soldiers as may be billeted on him, and to furnish lodging and attendance for each; and, if required, to furnish each soldier with meals as specified in the Second Schedule of the Army Act, or to allow the soldier the necessary firing and facilities for cooking his own meal, and to find stable accommodation for each horse, together with a forage ration. **s. 106 (1); Second Sch.**

The prices to be paid for billets are fixed annually in a Schedule attached to the Army Annual Act, except under a requisition of emergency, when they are fixed by the Army Council with the consent of the Treasury,* **ss. 106 (3), 108A (3); A. Ann. Act, Sch.**; and the senior Officer or Non-Commissioned Officer of every party billeted must, before departure, or if the party remains longer than four days, then every fourth day, pay what is due to the person furnishing the billets, **s. 106 (4)**; to refuse or omit to do this is an offence against military law. **s. 30 (3).**

The offences which persons subject to military law can commit in connexion with billets are dealt with in ss. 30 and 111.

A Constable who wrongfully billets persons not entitled, or accepts a bribe in connexion with billeting, or refuses to billet anyone entitled, is liable to a fine of not less than 40s., or more than £10. **s. 109.** An innkeeper who refuses to receive anyone lawfully billeted on him, or attempts to offer any bribe to escape his liability, is liable to a fine of not less than 40s., or more than £5. **s. 110.**

(ii.) Impressment of Carriages.

Upon production of a route, or, in the case of the Auxiliary Forces, when subject to military law, an order signed by their Commanding Officer, every Justice of the Peace is bound to issue his warrant for

* These rates have been fixed by **A.O. ¾¾.**

the impressment of such carriages, with the horses (or other animals), and drivers, as may be necessary for the movement of the regimental baggage and stores of the troops named in the route or order. **ss. 112, 181 (3), (4).** The amount to be paid to the owners is fixed in the Third Schedule attached to the Act, which amount may, under certain circumstances, be increased by the proper authority, if the local price of forage renders such an increase just. A carriage is not, except in emergency, to be required to travel more than one day's journey, or twenty-five miles.

s. 113, Third Sch.

The King, or, in Ireland, the Lord Lieutenant, may declare that a condition of emergency exists, and may authorize any General, or Field Officer Commanding a District, to issue a requisition on a Justice of the Peace, for carriages and horses of every description, and also for all kinds of boats on any river or canal, and air craft. It should be noted that there is no authority to impress drivers under this section. If necessary they would have to be impressed under the Proclamation issued by the King's prerogative at the beginning of a war. If an order calling out the Reserve is in force at the time, the requisition of emergency may extend to the purchase, as well as the hire, of the foregoing transport. **s. 115.** If any difference arises as to the amount to be paid, the amount will be fixed by the County Court Judge. **A. (Amend.) Act.; s. 2.**

Similar provisions are made for offences in regard to impressment of carriages, whether committed by persons subject to military law, constables, or others, as in the case of billets. **ss. 31, 116, 117, 118.**

CHAPTER XX.

DUTIES IN AID OF THE CIVIL POWER.

One of the most difficult, and perhaps disagreeable, duties that troops can be called upon to perform in time of peace is to be called out in aid of the Civil Power. It must be clearly understood that in law the soldier has exactly the same liabilities—and no other—in the maintenance of public order as any ordinary citizen. A soldier does not cease to be subject to the ordinary law of the Realm by becoming subject to military law, and it is the Common Law duty of every citizen to assist the Authorities in the quelling of public disorder. Owing to the fact that soldiers, acting in their military capacity, can only act by using their arms, and that their arms are very deadly, it has been laid down on high authority that it should be the last expedient of the Civil Authorities to call out the troops to their aid.

Man., XIII., 14, 34 : Dicey, pp. 266, 276.

The different kinds of public disturbances are classified in our law as unlawful assemblies, routs, riots, or insurrections.

An unlawful assembly is an assembly of three or more persons with intent to carry out any common purpose, lawful or unlawful, in such a manner and under such circumstances as to inspire fear in persons of ordinary courage or to cause them to apprehend a breach of the peace. An actual act of violence by one of the assembly is not necessary to constitute the meeting unlawful if its character is such as to alarm persons of reasonable firmness and courage. **Man., XIII., 2 ; Stephen, Crim., Art. 75.**

A rout is an unlawful assembly which has made a motion towards the execution of the common purpose.

Stephen, Crim., Art. 76.

A riot is an unlawful assembly which has actually begun to execute a common purpose of a *private* nature by a

breach of the peace and to the terror of the public. An assembly which was originally lawful may become a riot if they execute any such purpose to the terror of the public, even though they had not this purpose in mind when they assembled. **Man., XIII., 4; Stephen, Crim., Art. 77.**

An insurrection differs from a riot in having an object of a *general* and *public* nature, and is really a species of treason known technically as levying war against the King.

Man., XIII., 6; Stephen, Crim., Art. 54; Archbold, p. 956.

Illustrations.

A large number of people assemble in a tumultuous manner armed with sticks and other weapons to protest against the closing of a public way, and with the intention of removing the barrier. This is an unlawful assembly.

The mob move off in the direction of the barrier, which they intend to demolish. This is a rout.

The mob, arrived at the barrier, proceed to remove it in a violent and riotous manner. This is a riot.

A party of men on strike assemble to discuss their grievances. This is *not* an unlawful assembly provided the circumstances of their meeting are not calculated to inspire terror to the public.

Inflamed by the speeches of one of the orators they rush off and attack all the bakers and other food shops in the vicinity. This is a riot.

A mob assembles and attacks a prison with a view to obtaining the release of some of the prisoners therein. This is an insurrection.

The liability of the various branches of the military forces to be called out *as such* in aid of the Civil Power is as follows:—

The Regular Forces are liable, not by any Statute, but by custom, and Parliament has recognized their employment on this duty by granting allowances.

Clode, Vol. II., p. 138.

The Army Reserve are liable. This includes the Special Reserve. **R.F. Act., s. 5.**

The Territorial Force is not liable to be called out, no provision for this being made in the Act; but they may avail themselves of their organization to resist an attack on their armouries or storehouses, and use their arms if necessary. **T.F.R., 404, 407.**

The amount of force that may be used in dispersing an unlawful assembly, or in quelling a riot or insurrection, must depend on the nature of each case, the general rule being

that no more force is to be used than is necessary to effect the purpose. As stated above, there is no distinction in law between the duties and liabilities of the soldier or of any ordinary citizen in assisting to quell such disorders. The regulations direct that troops are, except in sudden and great emergency, only to be taken out to aid the Civil Power on requisition by a Magistrate or Chief Constable, and that they are to be accompanied by a Magistrate while performing the duty. This being so, it is proper for the Officer in command to place himself under the Magistrate's orders, and not to take action until requested by him to do so. This request should be in writing, but it is not legally necessary that this should be the case. The Officer is, however, responsible for what he does, and if he considers force unnecessary he need not use it. On the other hand, if force becomes necessary he is justified in using it, even though not so requested by the Magistrate, and he may be called to account for not taking the necessary action. Should his behaviour afterwards be the subject of judicial enquiry, the fact that he acted on the Magistrate's order will naturally be taken into consideration as evidence of his good faith ; but he will have to answer for his own acts. The law of the land holds no one compelled to obey an illegal order, or indeed justified for his illegal action because it was ordered by a superior. Hence neither the Officer nor the men are justified in using unnecessary force, the one simply because the Magistrate directed it, or the others because the Officer ordered it.

Man., XIII., 13, 35 ; K.R., 956 - 964 ;
Dicey, 267, 278 *et seq.*

Unlawful assemblies and riots are misdemeanours, punishable by fine and imprisonment ; in order, however, to give the Civil Power authority to disperse dangerous assemblies before they actually proceed to violence, an Act was passed in the reign of George I., called the Riot Act, which gives the Magistrate and those acting with him special power. By this Act it is provided, that whenever the Magistrate thinks it necessary, he may make the proclamation laid down in the Act. He approaches as near to the rioters as he can with safety, and having commanded

silence, reads the proclamation, which charges all persons there assembled to depart at once to their habitations or lawful business. This is erroneously called "reading the Riot Act." It has been decided that the words "God save the King" at the end of the proclamation are essential, and must be read. Before the proclamation is read the "*Alarm*" should be sounded, if possible, to call attention to what is going to be done. The Magistrate should take a note of the time of making the proclamation, and preserve the paper from which read. The effect of this reading is, that if the persons assembled, to the number of twelve or more, remain together for one hour afterwards they are guilty of felony, and become liable to penal servitude for life. They may be at once apprehended by the Magistrate and any persons assisting him, and if any of them are killed or injured in the attempt to apprehend or disperse them, the Magistrate and those assisting him are held indemnified. If the reading of the proclamation is prevented by the rioters, those hindering it, and those remaining, are liable to the same punishment as if it had been read.

Man., XIII., 19—22; K.R. 961;
Stephen, Crim., Art. 78, and *note*.

It has often been supposed that after the reading of the proclamation nothing can be done, and the troops must remain passive till an hour has elapsed, even though the rioters proceed to extreme violence. This view is, however, quite erroneous. The Act is not negative, and does not in any way prevent necessary force being used at any time after the reading of the proclamation, or even without its being read at all. It only provides that after the lapse of an hour the rioters become felons, and fully indemnifies those acting against them for any injuries suffered by them.

Man., XIII., 23, 24; Dicey, p. 268;
Clode, Vol. II., pp. 129, 130.

The following rules are laid down in the King's Regulations for the guidance of troops acting in aid of the Civil Power. Troops are not to be taken out on this duty, except in cases of great and sudden emergency, without a requisition in writing or by telegram of a Magistrate or Chief Constable: if the disturbance takes place near where

the troops are quartered the Commanding Officer will use his discretion as to the necessity for complying with the requisition. The Military Authorities will fix the number, and arrange for their despatch, and will inform the Civil Authority of the time they will arrive. **K.R., 956.** The latter must arrange for their accommodation, food, etc., and for conducting them to the place where their services are required. **K.R., 957, 958; Clode, Vol. II. p. 143.**

The troops must march in regular military formation, with the usual precautions, and must be accompanied by a Magistrate. **K.R., 960.** The detachment will be told off into four sections, each under an Officer or Non-Commissioned Officer, if the total strength is not more than twenty files; if it exceeds that number it will be told off into more than four sections. **K.R., 968.**

If the police are unable to cope with the disturbance, the Magistrate will request the Commanding Officer "to take action." As already stated this request should be in writing, but not necessarily so. **K.R., 963.** The Officer will then act according to his discretion. If he thinks immediate action unnecessary, he need not act at once; if he thinks it necessary to fire, he will give the order. **K.R., 965.** If he considers a small amount of fire will suffice, he will only order named files or sections to fire; and they only will fire, and only by order of their Officer; and all action will cease as soon as the Officer thinks further force unnecessary. **K.R., 969.** Before fire is opened, the mob should be warned that it will be effective. **K.R., 967.** Fire must not be directed over the heads of the crowd, as that might only injure persons not engaged in the riot. **K.R., 972.**

The existence of an armed insurrection would justify the use of any degree of force necessary to effectually suppress it. **Man., XIII., 33.** In times of general insurrection it has been often necessary for the Executive to employ what is known as Martial Law. This is a term about which much confusion exists. Martial Law, in the proper sense of the term, in which it means the suspension of ordinary law and the temporary government of the country, or parts of it by Military Courts, is unknown to our English Law. Foreign

Countries recognize what is called "a state of siege," under which the authority of the Civil Power passes temporarily into the hands of the Military; but we have nothing equivalent to this. What is meant by Martial Law in English Jurisprudence is the Common Law right of the Crown and its servants to repel force by force in case of insurrection or any violent resistance of the law.

Man., I., 15, 17; Dicey, pp. 265, 266.

Thus, when Martial Law has been proclaimed in our Colonies (as it was in Cape Colony during the late Boer War), it is an announcement to the public that the provisions of the Civil Law are inadequate to meet the situation, and an intimation to the Military Authorities that the Executive is willing that they should take exceptional measures to cope with the circumstances which the Civil Law is unable to deal with. Martial Law thus does not replace the Civil Government, but only supplements it. **Mart. Law, p. 78.**

Under Martial Law, thus proclaimed, civil rights and liberties are in abeyance, and the Military Authorities can arrest suspected persons without warrant. In the United Kingdom, rebels when arrested would always be handed over to the Civil Courts for trial, as our system of Jurisprudence does not sanction Military Courts dealing with any such persons not subject to Military Law. **Clode, Vol. II., p. 169.** In the Colonies, however, under Martial Law, Military Courts have been formed with power of dealing with persons committing offences against it. Such Courts were established at the Cape. The offences with which they could deal were :—

(*a*) Treasonable or seditious acts or language.
(*b*) Joining, or aiding the enemy, or carrying on trade with him.
(*c*) Destroying railways, or other acts endangering the forces.
(*d*) Serious breaches of Martial Law Regulations.

Mart. Law, p. 101.

Such Courts may be composed of Officers or civilians, or a mixture; their procedure will as far as possible follow that of a Court-Martial, and care must be taken to afford the accused every reasonable facility for making his defence

Officers administering Martial Law must be very careful to see that the offence was committed, and the accused tried, within a proclaimed district. It must be remembered that, though necessary, this action under Martial Law, is strictly speaking, illegal, but those who have acted *bonâ fide* in the interests of the State have nothing to fear; for an Act of Indemnity is always subsequently passed, justifying the measures taken; and, even failing this, the Crown can refuse to prosecute, by a *nolle prosequi*, or can nullify an unjust conviction, by a free pardon.

Man., I., 15; Mart. Law. pp 81—84; Dicey, pp. 47, 218, *et seq.*, 281, and *note*; Clode, Vol. II., p. 162.

QUESTIONS.

1. A party, consisting of one Officer and 30 infantry soldiers, is ordered to proceed by road to aid the Civil Power. Give briefly the principal points in the King's Regulations, which guide the Officer in carrying out this duty.
2. What effect has the reading of the Proclamation contained in the Riot Act on the legal position of the rioters? Is it absolutely necessary that such Proclamation should have been read before forcible measures can be adopted?
3. Explain what is meant by Martial Law, and give an example of its application.

CHAPTER XXI.

HISTORY OF MILITARY LAW.

In the early days of our history Military Law, as distinct from the ordinary law, only existed during war time. The *fyrd* of Anglo-Saxon days—from which our late Militia (now converted into the Special Reserve) has descended—was organized and governed by the ordinary laws of the land; and in later days the existence of the feudal levies was based on the ordinary law dealing with the tenure of land. When war broke out and these troops were called out for service they were governed, while in the field, by Ordinances or Articles of War made by the Crown, or by the Commander-in-Chief under authority delegated to him by the Crown. These Articles only remained in force so long as the war lasted, and when the troops were disbanded their operation ceased. Thus in time of peace there was no Military Law in those days; although various attempts were made by the more despotic of our Sovereigns to enforce Military (or as it was then called "Martial") Law by the prerogative of the Crown during peace time.

Man., II., 3, 7.

On the establishment of a standing army after the Restoration in 1660, the necessity for special powers to keep this force in "an exact state of discipline" soon became felt, and on the 3rd April, 1689, the first Mutiny Act was passed to punish mutiny and desertion. This Act was only to last six months; but on its expiration another was passed, and with a few exceptions, a Mutiny Act was passed annually till 1878, inclusive. Owing to the jealousy of Parliament over the control of the military forces of the Crown the duration of the Act was always limited to one year.

Man., II.. 16—20.

The earlier Mutiny Acts did not extend abroad; but until 1712 the nation was almost constantly at war and the troops on active service were governed by Articles of War

made as of old under the prerogative of the Crown. In this year statutory power was given in the Mutiny Act to the Crown to make Articles of War binding on the troops in time of peace out of the United Kingdom. This power was extended to troops at home by the Mutiny Act, 1715. In 1718 the Mutiny Act was extended to apply to troops in the Colonies, who were thus governed by the Act and the Statutory Articles of War, made by the Crown under it, until 1803; the prerogative power of the Crown to govern the troops in foreign countries during war by Articles of War still remaining. **Man. II., 22—29.**

In 1803 the Mutiny Act and the Statutory Articles of War were extended to the army, whether serving within or without the Crown's dominions; and thus the prerogative power of making Articles of War in time of war was superseded. **Man., II., 31, 32.**

Things continued thus until 1879, when the inconvenience of having the army governed partly by an Act of Parliament and partly by Articles of War led to their being combined in one Statute called the Army Discipline and Regulation Act; the law as to enlistment being embodied in the same Statute. In order to obviate the necessity of annually passing this long Act through Parliament, while at the same time continuing the constitutional control of Parliament over the standing army, it was enacted that the provisions of the Act should be continued from year to year by a short Act, called the Army Discipline and Regulation Commencement Act. After a lapse of two years the Army Discipline and Regulation Act was repealed and its provisions re-enacted in the present Army Act, which is similarly continued in force yearly by the Army (Annual) Act, as described in Chapter II. **Man., II., 33—35.**

CHAPTER XXII.

THE LAW RELATING TO THE RESERVE FORCES.

The Reserve Forces are governed by the Reserve Forces Act, 1882, and other short Acts passed in 1890, 1898, 1900, and 1906; and the Territorial and Reserve Forces Act, 1907. As already stated in Chapter III., they are, under certain circumstances, subject to military law, and are then subject to the provisions of the Army Act. **s. 176 (5).**

Under the Act of 1882 it is lawful for the Sovereign to keep up an Army Reserve of such numbers as may be provided by Parliament, consisting of two classes, viz :—

Class I.—Men who, having served in the Regular Forces, are either transferred under the Army Act, or enlisted or re-engaged under this Act; and who are liable to be called out for permanent service anywhere.

Class II.—Out-pensioners of Chelsea or Greenwich Hospital (Marines), or men who, having served their full time in the Army, are enlisted or re-engaged under this Act, and who are only liable for service in the United Kingdom. **R.F. Act, s. 3.**

Under the Territorial and Reserve Forces Act, men who have never served in the Regular Forces can also be enlisted into Class I. of the Reserve and are known as "Special Reservists." Such men enlist for six years, and may re-engage for further periods of four years.

T. & R.F. Act, s. 30 (1); R.S.R., 140.

All men of the Army Reserve can be called out :—

(i.) Annually, for training for twelve days or twenty drills, and when so called out may be attached to a body of Regular, or Auxiliary Forces.

R.F. Act, s. 11.

Men of the Special Reserve may also be called out for six months' training on enlistment, and fifteen or twenty-one days' annual training, and in addition for special courses of training for any periods not exceeding six months in all.

T. & R.F. Act, s. 30; R.S.R., 135. 278.

(ii.) In aid of the Civil Power, by the Secretary of State, or Lord Lieutenant of Ireland; or as far as regards the men living in any town or district, by the Officer Commanding the troops there.

R.F. Act, s. 5.

(iii.) On permanent service, by Proclamation issued by the King in Council, in time of great emergency or national danger. If Parliament is sitting the occasion must first be communicated to them; and if not sitting, Parliament must be assembled within ten days to have the communication made to them. Men thus called out are liable to serve till no longer required, or until their service has expired under the Army Act, s. 87; or the King may issue a proclamation that the Special Reserves only are to cease to be so called out.

R F Act, ss. 12, 13; T. & R.F. Act, s. 30 (5).

A certain number of men in the 1st Class Reserve, not exceeding 6,000 in all, whose character on transfer was not less than "good," may agree in writing to be liable, during their first two years' service in the Reserve, to be called out for service abroad in warlike operations. These men may be called out without the proclamation above mentioned, and it is not necessary to assemble Parliament, but the exercise of the power must be reported to Parliament as soon as possible. Men thus called out are not liable to serve more than a year, and may revoke their agreement by three months' notice in writing. **R.F. & M. Act. s. 1; A.R. Reg., 1, 8.** Special Reservists, to the number of 4,000, may make a similar agreement for the whole or any part of their reserve service.

T. & R.F. Act, s. 32; R.S.R., 3, 137.

It is lawful for the Secretary of State to make regulations under the Act for the government, discipline, and pay of the Reserve. Under the regulations now in force the

Army Reserve (other than the Special Reserve) consists of the following classes and sections :—

Class I.

Section A.—Consisting of the men referred to above, who are liable to be called out for small wars. On completing their first two years' service in the Reserve they are transferred to Section B.

Section B.—The ordinary Reserve men, transferred under the terms of their original enlistment, on the termination of their Army service ; or who have been allowed to convert their Colour Service into Reserve Service, under Army Act s. 78 (1).

Section D.—Men who on the termination of their limited engagement, enlist in the Reserve for a further period of four years. Certain artificers are allowed to re-engage in this section up to 50 years of age. **A.R. Reg. 1, 18.**

Class II. is practically non-existent. **Man., XI., 31.**

The various Militia units, existing at the time the Territorial and Reserve Forces Act was passed, have (with a few exceptions) been converted into Special Reserve units and the men belonging to them were asked at the end of their last year's training as militiamen to enlist into the Special Reserve. Those units not thus converted have been disbanded. **T. & R. F. Act, s. 34 ; A.O.** $\frac{2}{08}$, $\frac{101}{08}$

The two regiments of Irish Yeomanry and King Edward's Horse have also been transferred to the Special Reserve.

A.O., $\frac{162}{08}$, $\frac{78}{13}$.

A Special Reservist who enlists into the Regular Forces is thereupon deemed to be discharged from the Reserve.

T. & R.F. Act, s. 30 (6).

Any Reserve man who—

(*a*) Fails on two consecutive occasions to comply with any order respecting the pay of the Reserve ;

(*b*) When ordered to attend at any place, without reasonable excuse fails to do so ;

(*c*) Uses insubordinate language, or behaves in an insubordinate manner, to any Officer or Non-

Commissioned Officer acting under the Act in the execution of his office, and who would be his superior Officer if he were under military law;

(*d*) By any fraudulent means obtains, or is accessory to obtaining, any pay or other money;

(*e*) Fails without reasonable excuse to comply with orders or regulations made under the Act;

is liable to be tried by Court-Martial and to suffer imprisonment, or by a Court of Summary Jurisdiction and to be fined not less than 40s. or more than £25, or in default imprisonment as allowed by law. **R.F. Act, s. 6.**

Men who without leave, except through sickness or other reasonable excuse, fail to attend when called out, are guilty of the following offences:—

(i.) If called out on permanent service or in aid of Civil Power — Desertion, or Absence without leave, as may be proved.

(ii.) If called out for annual training — Absence without leave.

and are liable to be tried by Court-Martial under ss. 12 or 15 of the Army Act, and punished accordingly; or by a Court of Summary Jurisdiction and fined not less than 40s. or more than £25, or in default, imprisonment, as allowed by law for non-payment of the fine. **R.F. Act, s. 15.**

The law as to apprehension of absentees and deserters; Courts of Inquiry on their illegal absence; offences committed by civilians in assisting desertion, etc., is similar to that already described for the Regular Forces.

R.F. Act, ss. 16, 17, 19.

A Reservist is forbidden to make away with any military decoration granted to him, **A.R. Reg. 56**, or to quit the United Kingdom without leave. **A.R. Reg. 58; R.S.R., 206.**

An offender may not be tried by both a Court-Martial and a Court of Summary Jurisdiction; and is not to be tried by the latter without the written sanction of an Officer having power to direct his trial by Court-Martial, or some superior authority. Proceedings may be instituted

against him although his reserve service has expired, and notwithstanding any limitation in any other Act, at any time within two months of his offence becoming known to his Commanding Officer, if he is then apprehended, or if not, then within two months of his apprehension.

R.F. Act, s. 26 and *note.*

If a Non-Commissioned Officer in the Reserve is tried by Court-Martial and sentenced to imprisonment he forfeits his rank, and if convicted by the Civil Power is liable to be reduced by the Army Council if the Officer in charge of Records thinks it desirable. **A.R. Reg. 53, 54.**

With respect to the notices required by the Act it is enacted as follows:—

(1) A notice may be served by being sent by registered post to a man's last registered place of abode.

(2) Evidence of delivery of such letter shall be evidence that the notice was brought to his knowledge.

(3) Publication of a notice in the prescribed manner in the parish in which his last registered place of abode is situated, shall be deemed sufficient notice to him.

(4) Constables and others are obliged, under penalty of a fine of twenty pounds, to assist in publishing and serving notices. **R.F. Act, s. 24.**

Questions.

1. Give a short general account of the Reserves for the Regular Army.
2. Explain the meaning of Class I., Army Reserve.
3. Of what men does Section B., Class I., Army Reserve, consist? What training are they liable to?
4. Of what men is Section A., Class I., Army Reserve, composed? What are their liabilities as regards service?
5. How much time have the men in the different Reserves usually spent in military service?
6. Distinguish in detail between Sections A, B, and D, of the Army Reserve.

CHAPTER XXIII.

THE LAW RELATING TO THE MILITIA.

In consequence of the passing of the Territorial and Reserve Forces Act of 1907, the Militia, as we have hitherto known it, has ceased to exist, and the units—with the exception of those which have been disbanded—have been converted into units of the Special Reserves, and the law relating to them as such has been explained in the last Chapter. **T. & R.F. Act, s. 30; A.O. $\frac{3}{05}$.**

It must not, however, be overlooked that though by this momentous change the Militia no longer exists, the laws relating to this Force have not been repealed, so that such a Force could be again raised at any time without fresh legislation. And as, therefore, liability to serve in the Militia still legally continues, the following few remarks as to this liability may be of interest.

The Militia, as we used the term, was what was known as the General or Regular Militia, the descendants of the old Trained Bands; but there is also known to the law another branch called the Local Militia, which is in effect the old "General Levy"; this branch is however in abeyance at the present time. **Man., IX., 62.**

In these days, when much discussion is heard as to the advisability of compulsory service in our Army, it cannot be too well understood that there is nothing new, or contrary to the principles of the Constitution, in this, and that the liability to serve in the Militia has existed from the earliest known period of our history, and that such liability exists both at Common Law, and by Statute. By Statute Law, all able-bodied men between the ages of 18 and 30, are, with a few exceptions, liable to serve in the General Militia for five years. The number to be furnished by each county (called the quota) is fixed, and the men required are obtained either

as volunteers or by ballot. This Statute has never been repealed, but for many years an Act was passed annually suspending the operation of the ballot, unless ordered by an Order in Council, and the Act of 1865 has since been annually continued by the Expiring Laws Continuance Act.

Man., IX., 67, 71.

Service in the old general levy has always existed by Common Law, and several Acts have been passed regulating the raising of this force, under the name of the Local Militia. The quota from each county is fixed by Parliament, and men are liable to be balloted for, between the ages of 18 and 30, and if drawn must serve for four years, without power of finding a substitute; the exemptions being very few. Effective yeomanry and volunteers in the county are accepted as part of the quota. This branch of the Militia has not been raised since 1815; the operation of the ballot being annually suspended till a few years ago, since when nothing has been done in the matter.

Man., IX., 103-105.

CHAPTER XXIV.

THE LAW RELATING TO THE TERRITORIAL FORCES.

Under the Territorial and Reserve Forces Act of 1907, it has become lawful for the King to maintain a Force, called the "Territorial Force," which in practice has taken the place of the Yeomanry and Volunteers, which have hitherto existed, and who have (with the exception of the Irish Yeomanry, and the University and some other Volunteer Corps), been transferred to this new Force.

T. & R.F. Act, s. 29; A.O. $\frac{71}{64}$.

For the purpose of raising and administering the Territorial Force, Associations have been formed in each county in Great Britain, whose duty it is, in conjunction with the Army Council, to recruit, organize, and equip this Force and make the necessary provision for ranges, buildings, camping grounds, etc., required. **T. & R.F. Act, ss. 1, 2, 6.**

Men are enlisted for a county, and appointed to a unit belonging to the county; and cannot be transferred without their consent to another corps, or posted to any body of regular forces forming part of the corps, or except when the Force is embodied to any other unit of the corps. **T. & R.F. Act, ss. 7 (4), 9 (1); T.F.R., 130.*** The period of enlistment is four years, **T.F.R., 129**; and in his last year of service a man may re-engage for a further period not exceeding four years; the actual term being fixed by the County Association.†

T. & R.F. Act, s 9 (1); T F.R., 139, 141.

If the Army Reserve are called out at the time when a man of the Territorial Force would be entitled to be discharged, he may be required to prolong his service for such period not exceeding twelve months, or during the present war for the duration of the war, as the competent Military Authority may direct.

T. & R F. Act, s. 9 (5); M.S. Act (Sess 2), s. 2.

---

*During the present war these rules have been abrogated, and men may be transferred to any corps and posted to a regular unit of the corps without their consent. **M.S. Act (Sess. 2), s. 14 (1).**

† During the present war men may also enlist for the period of the war. **A.O. $\frac{19}{14}$.**

The competent Military Authority is defined in the Army Act, s. 101, and Rule of Procedure 128.

T. & R. F. Act, s. 10 (1).

If any one enlists into the Territorial Force after having been discharged into disgrace, he can be tried by Court-Martial for the offence, and is liable to two years imprisonment with hard labour. **T. & R. F. Act, s. 11 (1).**

The Force is liable to serve in any part of the United Kingdom ; but men can only be sent abroad with their own consent. Those who give that consent are known as the Imperial Service Section. Men may also agree to be called out for military service for home defence, whether the whole Force is embodied or not. These men form the Special Service Section. **T. & R.F. Act, s. 13 ; T.F.R., 8, 10.**

Officers and men are subject to Military Law under the conditions stated in Chapter III. **ss. 175 (3A), 176 (6A).**

Men of the Territorial Force are liable to be called up—

(i.) For preliminary training, during their first year's service, for such periods as may be prescribed ; besides attending the number of drills prescribed for a recruit. **T. & R.F. Act, s. 14.**

(ii.) For annual training, for not less than eight or more than fifteen (in the mounted branches eighteen) days every year ; besides attending the number of drills prescribed. **T. & R. F. Act, s. 15.**

(iii.) For embodiment ; whenever the Army Reserve are called out by proclamation.

T. & R F. Act, s. 17 (1).

Modifications in the period of annual training may be made, in the case of a unit by the General Officer Commanding, or in the case of an individual by his Commanding Officer. His Majesty may, by Order in Council, extend the annual training for the whole or any part of the Force to any period not exceeding thirty days, or may reduce it or dispense with it altogether. **T & R F Act, s 15 (1), (2).**

A man may be discharged by his Commanding Officer for disobedience when on any military duty or for misconduct ; but the man has a right of appeal to the Army Council. **T. & R.F. Act, s. 9 (4).**

Unless the Army Reserve are called out, a man can claim his discharge at any time on—

(i.) Giving his Commanding Officer three months notice in writing;

(ii.) Paying to the County Association such sum, not exceeding £5, as may be prescribed; and

(iii.) Giving up in good order his arms, clothing, and equipment, or paying their value.

T. & R.F. Act, s. 9 (3).

Anyone who makes away with, or destroys, or refuses to deliver up on demand any equipment, clothing, etc., issued to him is liable to prosecution before a Court of Summary Jurisdiction and to pay their value, and where he has wilfully made away with or destroyed them to pay a fine not exceeding £5 in addition. **T & R.F. Act, s 22.**

Any man, who, except through sickness or other reasonable excuse, fails to appear when embodied is guilty of desertion, or absence without leave, as may be proved, and is liable to be tried by Court-Martial, and punished accordingly.

T. & R F. Act s 20

If, similarly, he fails to attend for preliminary or annual training or the prescribed number of drills, he is liable to be tried by a Court of Summary Jurisdiction and pay a fine not exceeding £5; **T. & R.F. Act, s. 21.**

A man guilty of desertion by failing to appear on embodiment forfeits his service between the date of his offence and the date of his apprehension or surrender; but he does not forfeit service under s. 79 for desertion under any other circumstances. **s. 178; T. & R F. Act, s. 20 (3).**

Any offence against the part of the Act dealing with the Territorial Forces, and any offence under the Army Act, committed by a man of the Territorial Force when not embodied, which is cognizable by a Court-Martial, can be dealt with by a Court of Summary Jurisdiction; and on conviction the offender is liable to imprisonment for a term not exceeding three months, or a fine not exceeding £20, or both. **T. & R.F. Act, s. 24.**

Officers and men of the Territorial Force are exempt from serving on juries and as peace or parish officers; and Field Officers are exempt from serving as High Sheriff.

T. & R.F. Act, s. 23 (4).

QUESTIONS.

1. In what circumstances is it necessary to embody the *whole* of the Territorial Force?
2. A person who had been discharged with ignominy from the Regular Forces enlists into a unit of the Territorial Force without declaring the circumstances of his discharge. His offence is discovered within two months of his enlistment into the Territorial Force, and he is to be tried by a District Court-Martial.

   Under what section of the Territorial and Reserve Forces Act would his offence fall?
3. When Private A. B. of the unit to which you belong completes his period of service in the Territorial Force. a Proclamation ordering all men belonging to the First Class of the Army Reserve to be called out on permanent service is in force.
   (*a*) May Private A. B. be required by his Commanding Officer to prolong his service? Give the reasons for your answer.
   (*b*) For what period, if any, could Private A. B. be required to prolong his service in the circumstances mentioned?
4. At an ordinary drill parade, held at the time when your unit was not at annual training in a camp, Private S. T. of your company disobeyed an order given by a Serjeant-Instructor on the Permanent Staff. You bring the case to the notice of your Commanding Officer who at once investigates it, and considers that Private S. T. is not a desirable man to retain in the unit, and thereupon orders the man's dismissal from the Force. Is the Commanding Officer's action lawful? If so has Private S. T. any right of appeal against being dismissed from the Force?
5. On being dismissed from the Territorial Force, Private S. T. was directed to return to the Headquarters of the unit the equipment and clothing in his possession which was issued to him as a man of the Territorial Force. Instead of doing this, Private S. T. wilfully destroyed the whole of such equipment and clothing. How should he be dealt with, and to what penalty is he liable for wilfully destroying the articles?

CHAPTER XXV.

THE LAW RELATING TO THE VOLUNTEER FORCE.

A Volunteer Force has been established under the Volunteer Act of 1863 and the various Acts amending the same. Regiments have been raised by Lords Lieutenant in each County or Lieutenancy in Great Britain, and formed into Corps and Battalions. **Vol. Act, s. 2.**

Each Battalion is a separate Corps, and men must be enrolled for a certain Battalion and not for the Regiment generally. They can be transferred from one Corps to another with their own consent and the concurrence of the Commanding Officers concerned.

The age for enrolment is 17 years and upwards. No alien can be enrolled. Liability for service in the Regular or Territorial Forces under the Military Service Acts is not affected by a man becoming a Volunteer.

Every Officer on receiving his commission and every man on enrolment in the muster roll of his Corps, must take an oath of allegiance and service before the Lord Lieutenant or a Deputy Lieutenant or Magistrate of the County or an Officer of the Corps. **Vol. Act, s. 6.**

The Force, or such part of it as is deemed necessary, can be called out for actual military service in Great Britain by His Majesty in case of imminent national danger or great emergency, the necessity being first communicated to Parliament, if sitting, or if not, declared in Council and notified by Proclamation. **Vol. Act, s. 17.**

Volunteers may also, with their own consent, be employed on military duties at the discretion of the General Officer Commanding-in-Chief under whom they are serving. When thus employed they will be attached to the Infantry Depôt nearest the Headquarters of their Corps.

Officers and men can sign an agreement that for any specified period, not exceeding the duration of the present war, they will attend such drills and training or perform such military duties (or both) as may be specified.

Vol. Act, 1916, s. 1 (1).

The Force consists of the following sections :—

Section A.—Men *over* military age, who have signed an agreement to undergo a specified course of training and attend a certain minimum number of drills each month. They must be physically fit and free to vacate their civil employment if required on an emergency.

Section B.—Men of military age who have signed a similar agreement.

Section C.—Volunteers *under* military age who have signed a similar agreement.

Section D.—All other Volunteers who have not signed such an agreement, except those of sections P and R.

Section P.—Volunteers, who are also Special Constables, who have been detailed for certain civil duties in case of an emergency.

Section R.—Men employed in certain war work, such as munitions or railways, who cannot be spared even for actual military services on invasion. **Vol. Act. 1916, s. 1 (1).**

A Volunteer, unless on actual military service, or as mentioned below, can resign on—

(1) Giving seven days' notice in writing to his Commanding Officer ;

(2) Delivering up in good order, fair wear and tear excepted, all arms, clothing, and appointments, the property of the Public or the Corps ;

(3) Paying any money due to the Corps.

Vol. Act, s. 7.

But a Volunteer who has signed any of the above-mentioned agreements cannot so resign while it is in force but the Competent Military Authority may release him

Vol. Act, 1916, s. 1 (5).

Officers and men are subject to Military Law under the conditions stated in Chapter III.

ss. 175 (5), (6), 176 (8); Vol. Act, 1916, s. 1 (3), (4).

Any Volunteer, not incapacitated by sickness, who fails to attend when called out for actual military service is deemed a deserter. **Vol. Act, s 17.**

Any Officer or man who has signed any of the agreements referred to above and fails to perform any of the duties therein specified, is deemed guilty of an offence, and whether otherwise subject to Military Law or not, can be taken into military custody and dealt with for an offence under the Army Act, s. 15. **Vol. Act, 1916, s 1 (2).**

Any one who makes away with, sells, pawns, destroys, or refuses to deliver up any articles issued to him as a Volunteer is liable to prosecution before a Court of Summary Jurisdiction and to pay the value of the articles with costs as a penalty. **Vol. Act, s. 28.**

CHAPTER XXVI.

THE RELATION BETWEEN CIVIL AND MILITARY LAW.

It has already been pointed out that Officers and soldiers by being subject to military law do not in any way cease to be subject to civil law, but continue to share the rights and duties of other citizens. In all cases of conflict between the civil law and the military law, the former prevails.

s. 162; Dicey, pp. 276. 277; Clode, Vol. I., p. 206.

Thus the Civil Courts have jurisdiction over Officers and men in the Army, and the higher Courts of Judicature have the same power of supervising the exercise of authority by Military Courts and individual Officers as they have over the inferior Civil Courts and Magistrates. Any person therefore who considers himself wronged by the action of a Court-Martial, or an Officer, can obtain redress through the ordinary process of law. A Civil Court, however, will not take cognizance of any matter affecting the purely military status of an individual, or rights or privileges of a purely military nature; as it is held that by voluntarily subjecting himself to military law, he must accept the consequences so far as mere military rights are concerned.

Man., VIII., 1, 2; Dicey, pp. 283, 284.
Clode, Vol. I., p. 206.

Illustrations.

An Officer sentenced by Court-Martial to be "Cashiered"—no action will lie.
A Non-commissioned Officer sentenced to "Reduction to the ranks"—no action will lie.
A soldier sentenced to "Imprisonment"—an action will lie.
A soldier has his pay forfeited for absence by Royal Warrant—no action will lie.

The proceedings by which the Civil Courts supervise the actions of Courts-Martial and individual Officers, may be either criminal or civil. Criminal proceedings take the form of a prosecution, or an indictment on a criminal charge;

civil proceedings may be either preventive, *i.e.*, to restrain the commission or continuance of an injury, or remedial, *i.e.*, to give a remedy for an injury actually suffered.

Man., VIII., 8.

Preventive measures are taken by writs issuing from the High Court; (1) A *Writ of Prohibition*, forbidding the Court or Officer to whom it is addressed, to proceed further in the matter; (2) A *Writ of Certiorari*, commanding the Court or Officer to certify to the High Court a record of the matter, *e.g.*, a Court-Martial sentence, in order that if illegal it may be quashed; (3) A *Writ of Habeas Corpus*, issued to any one having another in custody, commanding him to produce his prisoner in Court and to state the authority for his detention. If the Court is not satisfied that the grounds for his detention are sufficient, they will order the prisoner to be discharged.

Man., VIII., 9, 17, 23.

Remedial measures take the form usually of an action for damages. All the members of a Court-Martial, or an individual Officer, who act without jurisdiction, or in excess of their jurisdiction, are liable to an action for damages at the instance of the person injured thereby. In the case of a Court-Martial, he may bring his action against the whole Court collectively, or against any individual member; but if in the first instance he only brings his action against one or more, and obtains judgment, he cannot afterwards sue the others. **Man., VIII., 40, 42,** *note.*

Courts-Martial and individual Officers may expose themselves to the above-mentioned proceedings by acting without jurisdiction, or by acting in excess of their jurisdiction.

Illustrations.

A General Court-Martial composed of three Field Officers, one Captain, and five Subalterns would act without jurisdiction.

A District Court-Martial imprisoning a civilian witness for contempt of Court would act without jurisdiction.

A Commanding Officer punishing a camp follower on active service would act without jurisdiction.

A Regimental Court-Martial sentencing an accused to six months' imprisonment would act in excess of their jurisdiction.

Members of Courts-Martial, like all other judicial Officers, are not held responsible for mere errors of judgment, provided they act within the bounds of their jurisdiction. The Courts are moreover reluctant to interfere with the exercise of

military authority over persons subject to military law, provided the exercise of this authority is not carried out with oppression or cruelty; they will also recognize the "Custom of the Service" as a justification for acts done in accordance therewith, provided the Custom be not repugnant to the law. **Man., VIII., 3-7, 58, 63.**

It is a presumption of law that *omnia rite esse acta, i.e.*, that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed the forms necessary for its validity were complied with; and that anyone acting in an official or public capacity has been duly appointed. The Army Act expressly provides that any power or jurisdiction given to any person holding any military office, may be exercised by any one authorized either by the Custom of the Service, or the Rules of Procedure, to exercise this power for the time being; and that warrants or other orders authorized to be made or issued by the Army Council, or other named officials, may be issued by their Staff Officers, and shall not be invalid for mere irregularities of form. **ss. 171, 172; Stephen, Art. 101.**

No action or prosecution, or other proceeding can be brought against any person in respect of any act done, or any neglect, in execution of his powers under the Army Act, unless it is commenced within six months of the alleged injury, or in case of a continuing injury (*e.g.*, imprisonment) within six months of its ceasing. **s. 170.**

Question.

Explain the relation in which Military Law stands to Civil Law, with special reference to the liability of persons subject to the former to be brought to trial for offences, before either Civil or Military Courts.

CHAPTER XXVII.

REGULATIONS UNDER THE REGIMENTAL DEBTS ACT, 1893.

On the death of a person subject to Military Law, a Committee of Adjustment will, as soon as possible, secure and make an inventory of all his personal effects, in camp or quarters at home, or within the Station or Command abroad; and will ascertain and pay all the preferential charges on his property. Medals and decorations are not included in the personal estate, but will be dealt with as provided by K.R., para. 1759. **R.D. Act, ss. 1, 11.**

The Committee of Adjustment will consist of three Officers, the President if possible not to be below the rank of Captain, or if the deceased was an officer, below that of Major. It will be appointed by the following Officers :—

(*a*) If deceased was serving with his unit, by the Commanding Officer.

(*b*) If the death occurred at sea, by the Officer Commanding the troops on board.

(*c*) In other cases, by the Officer in immediate command. **R.D. Reg., 1, 2.**

By the term "preferential charges" are meant any of the following liabilities, which are payable in preference to all other debts in the order stated :—

(1) Expenses of last illness and funeral.

(2) Sums due in respect of—

(*a*) Quarters.

(*b*) Mess, band, or other regimental accounts.

(*c*) Military clothing or appointments, not exceeding a sum equal to six months pay, and having become due within eighteen months of his death.

And abroad :

(3) Servants' wages, not exceeding two months each.

(4) Household expenses, incurred within a month of death, or last issue of pay. **R.D. Act, s. 2.**

If the widow or one of the next of kin, or their representative, pays or secures the preferential charges, the Committee of Adjustment shall not interfere further. If these charges are not paid within a month after the death, they will proceed to pay them.

R.D. Act, ss. 5, 6 ; R.D. Reg., 12.

Only the balance, after paying these charges, is liable to probate duty, and when this surplus does not exceed £100, no duty is payable. **R.D. Act, ss. 3. 16.**

When a man deserts, is absent twenty-one days, is convicted of felony by the Civil Power, or is delivered up as an apprentice, a similar Committee of Adjustment is appointed to dispose of his effects, which are sold and the proceeds credited to his Non-effective Account. Any balance may be paid to the apprentice ; or a deserter or absentee who rejoins within a year ; or to the man convicted of felony after he has undergone his sentence.

R.D. Act, s. 23 ; R.D. Reg. 36—48.

In the case of a person subject to military law becoming insane a similar course is adopted, and the balance applied for the benefit of the insane person. **R.D. Act, s. 24.**

When any surplus remains undisposed of, a notice is published annually for the next six years in the *London Gazette ;* and if not claimed within six months after the last notice, is applied for the benefit of widows and children of men dying on service.

R.D. Act. s. 10 ; R D Reg., 30 ; Man., pp. 797, 798.

APPENDICES.

PAPERS SET AT THE EXAMINATION FOR PROMOTION.

FULLY ANSWERED, WITH REFERENCES TO THE OFFICIAL BOOKS.

APPENDIX A.—LIEUTENANTS.
" B.—CAPTAINS.

(Time Allowed—Three Hours.)

[*The Manual of Military Law and the King's Regulations may be used.*]

APPENDIX A.

MAY, 1910.

LIEUTENANTS.

Q. 1. How are the proceedings of Courts-Martial to be promulgated?

A. 1. Whenever practicable, they are read out on parade, the accused being present under escort; but in any case the charge, finding, sentence, and minute of confirmation, must be communicated to the accused. **R.P., 53; K.R., 593.**

Q. 2. At the conclusion of the hearing of a charge, a Commanding Officer is of opinion that the charge ought to be proceeded with.

Specify the alternative courses which he may adopt in respect to the case.

A. 2. He may either—

(1) Dispose of the case summarily;
(2) Refer it to superior authority; or
(3) Adjourn the case to have the evidence reduced to writing. **R.P., 4 (3).**

Q. 3. When an officer has been placed in arrest, by whom should his release be ordered when such a course is deemed desirable?

A. 3. Except when he has been placed under arrest in error, he should not be released without the sanction of the highest authority to whom the case had been reported. **K.R., 468.**

Q. 4. (*a*) May a soldier be placed under stoppages of pay for a private debt?

(*b*) How is the rule on the subject to be made known to the general public?

A. 4. (*a*) No. **ss. 138, 144.**

(*b*) Once in every three years a notice to this effect is published in the newspapers having the widest circulation in each Command.

K.R., 442.

Q. 5. (*a*) What is a Court of Inquiry?

(*b*) In what respect do Committees and Boards differ from Courts of Inquiry?

A. 5. (*a*) A Court of Inquiry is an assembly of officers directed to collect evidence, and, if so required, to report with regard to any matter that may be referred to them. **R.P., 124 (A).**

(*b*) These differ from Courts of Inquiry in so far that the objects for which they are assembled should not involve any point of discipline.

K.R., 676.

Q. 6. At Colchester, on the 1st May, 1910, while the ——shire Battery, 1st ——shire Brigade, Royal Field Artillery, Territorial Force, was out for training, No. 789, Gunner X.Y., of that battery, was drunk on picquet duty. He is to be tried by a District Court-Martial.

Prepare a complete Charge Sheet to meet the case.

A. 6. CHARGE SHEET.

The accused, No. 789, Gunner X.Y., —shire Battery, 1st —shire Brigade, Royal Field Artillery, Territorial Force, a soldier of the Territorial Force out for training is charged with

s. 19. Drunkenness,

in that he

at Colchester, on 1st May, 1910, when on duty (picquet) was drunk.

M. S. CHRISTIE, Lt.-Col.,
Commg. 1st —shire Brig., R.F.A. (T.F.).

Colchester,
4th May, 1910.

s. 19; R.P., App. I.

Q. 7. At a trial by Court-Martial the prosecutor calls a witness whose evidence is not contained in the summary or abstract of evidence, and no notice of the intention to call the witness has been given to the accused.

State the procedure which the Court is to adopt in such a case.

A. 7. The Court would inform the accused that if he so desires they will adjourn, or the cross-examination of this witness may be postponed. **R.P., 76.**

Q. 8. Private A. B., 1st Battalion ——shire Regiment, was tried by a District Court-Martial for stealing goods, the property of a comrade. Serjeant E. F. of that unit gave the following evidence before the Court-Martial :—

"About 5 p.m. on the 1st May, 1910, Lance-Corporal Brown, of the battalion to which I belong, informed me that he had been told that Private A. B., the accused man before the Court, intended to steal a pair of boots belonging to Private C. D., and sell them.

"Knowing that Private A. B. was a bad character and had been previously convicted by Court-Martial of theft, I instructed Lance-Corporal Brown to keep a watch over Private A. B.'s movements. At about 7 p.m. the same day I was on my way to the barrack-room in which Private A. B. is quartered, when I saw Private A. B., the accused, come out of the barrack-room with his great coat on, the pockets of which appeared to be distended. My suspicions were aroused, and I ordered Private A. B. to return with me to the barrack-room. He did so, and on arrival there I found he had a pair of boots in the pockets of his great coat.

"I inspected the boots and found that each boot had stamped upon it the No. 1234, that being the regimental number of Private C. D.

"Private C. D. reported to me that a pair of his regimental boots had been stolen; he identified the pair of boots found on Private A. B. as his property, and I ordered Private A. B. to be confined in the guard detention-room."

A. 8. The statement made by Lance-Corporal Brown to the witness is not evidence, being excluded as "hearsay."

The witness's statement about the accused's bad character and previous conviction is not admissible, evidence of character being excluded.

The statement that Private C. D. had reported that a pair of his boots had been stolen is "hearsay," and is no evidence that they had been stolen.

Man., VI., 17, 46.

DECEMBER, 1910.

Lieutenants.

Q. 1. A Commanding Officer, having investigated a charge against a soldier and remanded the accused for trial by District Court-Martial, finds himself in the position of convening officer. What procedure should he adopt with a view to bringing the offender to trial by District Court-Martial?

A. 1. He must refer the case to a superior authority.
K.R., 549.

Q. 2. When a soldier is bound over by a court of ordinary criminal jurisdiction to appear for conviction, what entry, if any, is to be made in his conduct sheets?

A. 2. An entry will be made in both the company and regimental conduct sheets, unless the Commanding Officer considers an entry should not be made, in which case he will refer the case for decision to an officer not below the rank of Brigadier-General.
K.R., 1919, 1924.

Q. 3. (*a*) What is the effect of a sentence of forfeiture of seniority of rank in the case of a non-commissioned officer?
(*b*) Give an example to illustrate your answer.

A. 3. (*a*) The forfeiture affects his seniority in the rank only, and does not affect his period of service in the rank which will count from the date of his promotion to the rank. **A.O., $\frac{18}{18}$.**
(*b*) A serjeant promoted to that rank on 12th May, 1909, and sentenced to take rank and precedence as if his promotion bore date 1st December, 1910, although his seniority would only count from this latter date, would still reckon service in the rank of serjeant from 12th May, 1909.

Q. 4. When an officer is ordered for trial by Court-Martial without the evidence against him having been taken down in his presence in writing, what steps are to be taken to inform him of the evidence to be adduced at his trial ?

A. 4. An abstract of the evidence against him is to be given to him gratis not less than twenty-four hours before his trial, and shall be laid before the Court on its assembly. **R.P., 8.**

Q. 5. No. 711, Private X——Y——, 4th Bn. ——shire Regiment (Territorial Force), absented himself without leave from his unit when it was embodied, and enlisted into the Corps of Lancers of the Line, at Worcester, on 1st April, 1910, obtaining a free kit, value two pounds, one shilling and sixpence (£2 1s. 6d.). He joined the 21st Lancers for duty, his offence was discovered, and he is to be tried by a District Court-Martial. Prepare a complete charge sheet to meet the case.

A. 5. CHARGE SHEET.

The accused, No. 711, Private X——Y——, 21st Lancers, a soldier of the regular forces, is charged with—

s. 13. **Fraudulent enlistment,**

in that he

at Worcester, on 1st April, 1910, when belonging to the 4th Bn. ——shire Regiment (Territorial Force embodied), without having fulfilled the conditions enabling him to enlist, enlisted into His Majesty's Regular Forces for service in the Corps of Lancers of the Line, thereby obtaining a free kit, value two pounds, one shilling and sixpence.

Hounslow,
3rd Dec., 1910.

C. D. JENKINS, Lt.-Col.,
Commg. 21st Lancers.

s. 13 ; R.P., App. I.

Q. 6. Private A—— B——, who enlisted on 1st January, 1910, was absent without leave from 1st to 15th June ; was undergoing detention from 16th to

30th June; and had the following instances of drunkenness recorded against him during his service:—

(i.) On 10th February, 1910.
(ii.) On 13th March, 1910, on parade.
(iii.) On 31st May, 1910.
(iv.) On 29th September, 1910, on picquet.
(v.) On 31st December, 1910.

(*a*) What was the maximum fine, if any, to which, under the regulations, he would have been liable on each of the above-mentioned occasions, had he been disposed of by his Commanding Officer?

and

(*b*) On which of those occasions was he liable to be tried by Court-Martial for his offence?

A. 6. (*a*) (i.) 10th February—No fine.
(ii.) 13th March—Fined 2/6.
(iii.) 31st May—Fined 10/-.
(iv.) 29th September—Fined 10/-.
(v.) 31st December—Fined 7/6.

(*b*) He could be tried for the offences of the 13th March, 29th September, and 31st December.

s. 46 (3); K.R., 509, 510, 512.

Q. 7. A soldier, while undergoing a sentence of 12 months' imprisonment H.L., awarded on the 31st January, 1910, commits a serious offence for which he is sentenced, 19th August, 1910, to two years' imprisonment and to be discharged with ignominy from His Majesty's service.

(*a*) What action would you take, as confirming officer, when the proceedings of the Court-Martial reach you for confirmation?

(*b*) Explain the reasons for your action.

A. 7. (*a*) If possible, I should direct the Court to re-assemble and revise the sentence, **s. 54 (2)**: if for any reason this were impracticable, I

should vary the sentence of imprisonment to 17 calendar months and 12 days and confirm the finding and sentence thus varied.

R.P., 56 (A), App. II., p. 579 ; K.R., 585.

(*b*) A man cannot be sentenced to more than two years' consecutive imprisonment, and as the sentence begins to count from the date the proceedings are signed, this sentence of two years is in excess of what the Court can award. Taking into consideration the sentence the man has undergone since 1st January, 1910, the maximum sentence of imprisonment would be as stated above. **s. 68.**

MAY, 1911.

Lieutenants.

Q. 1. What are the rules to be observed when making entries in the regimental conduct sheets of soldiers?

A. 1. (i.) Each entry is to be initialled by the Commanding Officer or Adjutant, Court-Martial entries being signed in full.

(ii.) Vague entries are to be avoided.

(iii.) The recognized abbreviations for the various punishments are to be used, *e.g.*, "C.B.," "Impt. H.L.," etc.

(iv.) Forfeiture of pay or good conduct badges is to be entered in the column of remarks.

(v.) In making Court-Martial entries the "statement of offence" is to be entered, with the original sentence and any remission made by the confirming officer; any subsequent remission being recorded in the column of remarks. The date of the original sentence is to be entered in the column "Date of award." **K.R., 1919, 1920.**

Q. 2. Give a brief definition of the following terms:—

(i.) "Mutiny."

(ii.) "Lawful command."

(iii.) "Army Act."

(iv.) "Regular Forces" and "His Majesty's Regular Forces."

A. 2. (i.) "Mutiny" is collective insubordination, or the combination of two or more persons to resist lawful military authority. **Man., III., 4.**

(ii.) A "lawful command" means not only a command which is not contrary to the ordinary Civil Law, but one which is justified by Military Law. **Man., III., 10.**

(iii.) The "Army Act" is the Act of Parliament passed in 1881, replacing the Army Discipline and Regulation Act, 1879, consolidating the former law as contained in the Mutiny Act, Enlistment Acts and Articles of War. It is brought into force and continued annually for twelve months by the Army (Annual) Act, in which amendments in the principal Act are made as required. **Man.. II., 33—35.**

(iv.) The "Regular Forces" and "His Majesty's Regular Forces" mean officers and soldiers, who by their commission or terms of enlistment are liable to continuous service, for a term, anywhere; and include Royal Marines, the Indian Forces, and the Royal Malta Artillery, also soldiers of the Reserve Forces when called out on permanent service. **s. 190 (8).**

Q. 3. When, at a trial by Court-Martial, the accused states that he intends to call witnesses to the facts of the case, other than himself, what procedure is to be followed?

A. 3. (i.) The accused may make an opening address in his defence.

(ii.) He will then call and examine his witnesses, who can be cross-examined by the Prosecutor, and if necessary re-examined by him.

(iii.) He can then make a second address, summing up his case.

(iv.) The Prosecutor can address the Court in reply. **R.P., 41.**

Q. 4. Specify the penal deductions which may be made from the ordinary pay due to an officer of the Regular Forces.

A. 4. (i.) All ordinary pay during absence without leave, unless the absence is explained to the satisfaction of the Army Council.

(ii.) The sum necessary as compensation for any loss or damage occasioned by any offence of which he is convicted by Court-Martial.

(iii.) The sum required to make good the pay of any officer or soldier which he has unlawfully withheld.

(iv.) The sum necessary to make good any loss, damage, or destruction of public property, which the Army Council consider to have been occasioned by his wrongful act or negligence.

s. 137.

Q. 5. When a soldier is charged with an offence before a Civil Court situated at a distance from the station where his unit is quartered, what steps are to be taken with a view to an officer being detailed to attend the Court and watch the proceedings ?

A. 5. The case is submitted to the Divisional, Brigade, or Coast Defence Commander, who decides whether it is necessary for an officer to attend, and if so whether he is to be detailed from the man's unit or from one near the place of trial. In the latter case the man's Commanding Officer arranges with the Officer Commanding at the station, forwarding all information and documents required. The Officer detailed to watch the proceedings will give the Court all the information he has as to the man's character, and particulars of any previous convictions by a Civil Court, or by Court-Martial for offences under ss. 17, 18 (4) (5), or 41 of the Army Act; but he will not produce the man's Conduct Sheets to the Court.*

K.R., 505 .

*It is submitted, however, that this instruction is contrary to the law of evidence and that the Court could compel the Officer to produce them. Powell, p. 146.

Q. 6. Describe the nature of field punishment No. 1, and state in what respect field punishment No. 2 differs from it.

A. 6. The punishment may continue for a period not exceeding three months if awarded by Court-Martial or 28 days if ordered by a Commanding Officer; the offender may be kept in irons, to prevent escape; he may be attached in a fixed position for not more than two hours in one day, or more than three out of four consecutive days, or more than 21 days in all; he may be subjected to hard labour and treated as though under sentence of imprisonment with hard labour; on the march he will carry his arms and accoutrements, and is treated as a defaulter. In the case of a man sentenced to field punishment No. 2, he is not tied up in a fixed position.

Man., pp. 721, 722.

Q. 7. (*a*) Under what section of the Army Act (sub-sections to be quoted) does each of the following offences fall?

(i.) Striking a soldier when acting as sentinel (on active service).

(ii.) A soldier striking a police constable in whose custody he was placed.

(iii.) Striking his superior officer.

(iv.) A non-commissioned officer striking a private soldier.

(*b*) Which, if any, of the above offences, when committed by a private soldier, can a Commanding Officer dispose of summarily or try by Regimental Court-Martial without reference to superior authority?

A. 7. (*a*) (i.) s. 6 (1*d*).
(ii.) s. 10 (2).
(iii.) s. 8 (2).
(iv.) s. 37 (1).

(*b*) He can only dispose of the offence of striking the police constable. **K.R., 487.**

Q. 8. Comment upon the following punishments which were awarded for offences committed on active service :—

(i.) Private A.B. was sentenced by a District Court-Martial to 112 days' detention, and the detention was commuted by the confirming authority to 28 days' field punishment No. 1

(ii) Lance-Corporal C.D., for neglect of duty, was ordered by his Commanding Officer to forfeit all ordinary pay for a period of 14 days.

(iii.) Private E.F., who was absent without leave for three days, was awarded by his Commanding Officer 14 days' field punishment No. 2, and ordered to forfeit all ordinary pay for a period of three months.

A. 8. (i.) This is quite in order. A Confirming Officer can commute any sentence to one lower in the scale, and field punishment stands below detention, and can be awarded for an offence committed on active service.

ss. 44, provisos (5), (10), 57 (1).

(ii.) This is illegal, as a Commanding Officer cannot award forfeiture of pay on active service to a non-commissioned officer. **s. 46 (2*d*).**

(iii.) This award is partly legal and partly in excess of his powers; as a Commanding Officer can on active service award a private soldier field punishment not exceeding 28 days for any offence. He can also order him to forfeit ordinary pay for any offence, but only for a period not exceeding 28 days counting from the date of award.

s. 46 (2*d*); K.R., 494.

DECEMBER, 1911.

LIEUTENANTS.

Q. 1. (*a*) When the original proceedings of a Court-Martial are lost before they are confirmed, and no copy is forthcoming, how may sufficient evidence of the charge, finding, sentence, and transactions of the Court be obtained?

(*b*) What is necessary in order that such a record may be accepted in lieu of the original proceedings?

(*c*) Should the finding and sentence in such a case be confirmed?

A 1. (*a*) A copy of the charge sheet could generally be obtained from the Convening Officer who would have had the duplicate, and the President or some other member of the Court could write out from memory the charge if not procurable as above, and the finding and sentence and substance of the transactions of the Court.

R.P., 100 (B) and *note*.

(*b*) The consent of the accused to such substitution.

R.P., 100 (B).

(*c*) The finding and sentence can then be confirmed.

R.P., 100 (C).

Q. 2. (*a*) Are any of the entries in a soldier's company conduct sheet to be taken into account in the assessment of his character? If so, specify them.

(*b*) On what occasions should the company conduct sheet of a soldier be destroyed?

A. 2. (*a*) Entries in company conduct sheets of deprivation of lance stripe, or severe reprimand of non-commissioned officers, or of cases of

drunkenness, or admissions to hospital through alcoholism, which under former regulations were not regimental entries, are taken into account in assessing a man's character.

(*b*) It will be destroyed on a man's promotion to colour-serjeant or higher rank, or on his discharge or death. It will also be destroyed if containing any entries, and a blank one substituted—

(i.) On completion of six months from attestation.
(ii.) After every two years without an entry.
(iii.) On promotion to serjeant.
(iv.) On transfer to the Reserve.

K.R., 1925, 1929.

Q. 3. At Grantstown, on the 8th December, 1910, when the battalion to which he belonged was on active service and was defending No. 2 Blockhouse, No. 912, Private A.B., 1st Battalion ——shire Regiment, without orders, displayed a white flag in the presence of the enemy. He is to be tried by a General Court-Martial for his offence.

Prepare a complete charge sheet to meet the case.

A. 3. CHARGE SHEET.

The accused, No. 912, Private Arthur Brown, 1st Bn. ——shire Regiment, a soldier of the Regular Forces, is charged with—

s. 5 (4). When on active service, without due authority, sending a flag of truce to the enemy

in that he

at Grantstown, on the 8th December, 1910, without orders displayed a white flag in the presence of the enemy.

C. M. FOSTER, Lt.-Col.,
Commg. 1st Bn. ——shire Regt.

Grantstown,
13th Dec., 1910.

s (5) 4; **R.P., 10, 11, App. I.; K.R., 555.**

Q. 4. An officer, having been placed under arrest in error, was released from arrest by the General Officer Commanding the Division, to whom the case had been reported. The officer, however, considered himself wronged by the arrest, declined to return to his duty, and demanded to be tried by Court-Martial. Was the action of the officer who had been in arrest justified? If not, what course should he have taken in the circumstances?

No: an officer cannot refuse to return to duty on release from arrest; nor can he demand a Court-Martial. **K.R., 470.**

If he considered he had been wronged he should have forwarded his complaint, through the proper channel, to the Army Council for the directions of the King thereon. **s. 42; K.R., 439.**

Q. 5. (*a*) Explain with the aid of an example how a defect in the particulars of a charge may be amended by the finding of a Court-Martial.

(*b*) Give an example of a case where a soldier who is charged before a Court-Martial with a specific offence may be found guilty of another offence of a similar but less serious character.

A. 5. (*a*) Such a case would be where a man has been charged with losing by neglect his clothing and regimental necessaries, and the evidence failed to prove that he was deficient of, say, a pair of socks mentioned in the particulars; the Court could find him "guilty of the charge with the exception of one pair of socks."

R.P., 44 (c) and *note* 3.

(*b*) A man charged with desertion may be found guilty of absence without leave, if the Court do not consider the intention of quitting the service (which is the essence of the offence of desertion) proved. **s. 56 (3).**

Q 6. In what circumstances is a soldier of the Regular Forces liable to transfer to general service in commutation wholly or partly of other punishment?

A. 6. When he has been convicted of desertion or fraudulent enlistment or his trial for these offences has been dispensed with; or when he has been sentenced by Court-Martial to not less than three months' detention. **s. 83 (7).**

Q. 7. A soldier of the Regular Forces who owed a private debt of £20 is arrested for the debt, and sentenced by a Civil Court to undergo two months' imprisonment with hard labour. What action would you, as the soldier's Commanding Officer, take on the matter coming to your notice?

A. 7. Immediately write to the Clerk of the Court pointing out that under the Army Act, s. 144 (1), no soldier can be taken out of the Service for a debt which does not exceed £30, and that the order of imprisonment is under s. 144 (5) invalid, and that the Court must discharge the man.

s. 144 (1), (5).

Q. 8. A soldier is arraigned before a Court-Martial on the following alternative charges:—

(1) Making away with, by selling, articles of his public clothing.

(2) Losing by neglect the same articles.

On arraignment he pleads "not guilty" to the first charge, and "guilty" to the second charge. The summary of evidence shows clearly that he sold the articles.

How should the Court proceed in this case? Give the reasons for adopting the procedure.

A. 8. The Court should proceed to try him on both charges as though he had not pleaded "guilty" to either, and find him "guilty" of whichever the evidence proves. This procedure is adopted to prevent a man escaping the punishment due to

the more serious offence by pleading guilty to the less serious one. **R.P., 37** (A) and *note*.

Q. 9. A serjeant of the Regular Forces was discharged from the Army on the 15th July, 1911. On the 29th July, 1911, evidence is obtained which conclusively proves that on the 28th June, 1911, he stole a sum of £10 from the canteen of the unit to which he belonged. Explain how this man can be proceeded against for his offence.

A. 9. He can either be taken into military custody and tried by Court-Martial on a charge under s. 18, provided the trial commences before the 15th October, 1911; or he can be proceeded against before a Civil Court for felony.

s. 158 (1); Man. VII., 56.

MAY, 1912.

Lieutenants.

Q. 1. A person dressed in plain clothes presented himself at the guard room of the 1st Bn. Sussex Regiment at Aldershot on the 10th May, 1912; stated that he had formerly served in that unit as No. 125, Private E.F., and was a deserter therefrom. He was identified by the non-commissioned officer of the guard as Private E.F., and was placed in confinement in the guard room.

When brought before the Officer Commanding the 1st Bn. Sussex Regiment the following day for disposal, he stated that he originally enlisted in the Royal Garrison Artillery at Dover on the 31st March, 1908; that he had served in that corps until the 23rd December, 1908; that he absented himself without leave on that date; that he enlisted into the Sussex Regiment at Preston on the 28th December, 1908, and was then supplied with a kit value £2 5s. 6d.; that he served in the 1st Bn. Sussex Regiment without incurring a regimental entry until the 31st January, 1912, and that he absented himself without leave on the latter (*sic*) date when the unit was quartered at Dublin.

The Officer Commanding obtains particulars of the man's former service, verifies the statements above mentioned, and finds them correct, and remands Private E.F. for trial by District Court-Martial.

Prepare a charge sheet to meet the case, which should embrace every offence for which the man is legally liable to punishment.

A. 1. CHARGE SHEET.

The accused, No. 125, Private E— F—, 1st Bn. Sussex Regiment, a soldier of the Regular Forces, is charged with—

s. 12 (1.) Deserting His Majesty's service

in that he

at Dublin, on the 31st January, 1912, absented himself without leave from the 1st Bn. Sussex Regiment, and remained so absent until he surrendered at Aldershot on the 10th May, 1912, dressed in plain clothes.

E. C. MARTIN, Lt.-Col.,
Commg. 1st Bn. Sussex Regt.

Aldershot.
17th May, 1912.

ss. 12 (1), 13 (1), 161; R.P.. 10, 11, App. I.; K.R., 489.

Q. 2. As a Captain you are in command of a detachment of your unit, and two privates are brought before you for disposal—

(*a*) Private A.B., for using insubordinate language to a superior officer; and

(*b*) Private C.D., for absence without leave, from 5 p.m. on the 1st May, 1912, until 11.45 p.m. on the 25th May, 1912.

What is the maximum punishment which you are empowered to award in each case?

A. 2. (*a*) Private A.B., 168 Hrs.' Detn. and 14 days' C.B.
s. 46 (2), (9); K.R., 457, 493 (i), (iv), 494.

(*b*) Private C.D., 25 days' Detn.
s. 46 (2), (5), (9); K.R., 457, 493 (i).

Q. 3. A Court of Inquiry on the illegal absence of a soldier was held on the 19th February, 1912. The Court made a declaration showing that the soldier absented himself on the 30th January, 1912, and the declaration was formally entered in the regimental books by the Commanding Officer.

Explain why this declaration could not be admitted by a Court-Martial as legal evidence of the soldier's absence without leave.

A. 3. Because the Court of Inquiry was held before the soldier had been absent for a clear 21 days.

s. 72 (i) and *notes*; K.R., 673.

Q. 4. On the 20th February, 1912, you, as Commanding Officer, obtain conclusive proof that a soldier serving under your command was not guilty of an offence for which he had been awarded 168 hours' detention by his Commanding Officer on the 3rd January, 1910.

Explain fully the action which should be taken in the case.

A. 4. I should report the case to an Officer not below the rank of Brigadier-General; who, as more than two years have elapsed since the entry was made, must refer the matter to the Army Council. K.R., 507.

Q. 5. At a trial by Court-Martial a witness for the defence made a material statement which you, as Prosecutor, could not reasonably have foreseen. You wish to rebut that statement by calling a witness for the purpose.

What course would you adopt, and up to what stage in the proceedings could the witness be called?

A. 5. I should request permission from the Court to call the witness for this purpose. The Court can allow the witness to be called any time before the second address of the accused. The Court must inform the accused that if he so desires they will adjourn to allow him to prepare his cross-examination of the witness.

R.P., 76, 86 (B).

Q. 6. What must be proved in order to convict a soldier of—

(*a*) Disobeying in such a manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office?

(*b*) An attempt to desert His Majesty's Service?

A. 6. (*a*) It must be proved—

(i.) That the command was a lawful one within the meaning of the section; i.e., that it referred to military duties;

(ii.) That it was given by a superior;

(iii.) That he gave it personally;

(iv.) That he was in the execution of his office;

(v.) That the accused disobeyed it; and

(vi.) That he did so in a defiant manner, subversive of military authority.

s. 9 (1) *notes;* Man., III., 8, 10.

(*b*) Some *act* must be proved which, if completed, would have resulted in absence with the *intention* of not returning to duty generally, or of avoiding some particular duty.

s. 12 *notes;* Man., III., 18.

Q. 7. A Commanding Officer awards the following punishments:—

To Private O.P. 168 hours' detention.

To Private Q.R 28 days' detention.

When does the term of detention begin in each case?

A. 7. O.P. From the time he is received at the detention barrack; unless he does not go there until the following day or later, in which case it begins to count on the day after the award at the usual hour for the commitment of soldiers under sentence.

Q.R. From the date of award. R.P., 6 (A).

DECEMBER, 1912.

Lieutenants.

Q. 1. Two privates of your company commit offences. Private A.B. is confined in the guard room and Private C.D. is placed in open arrest. As Company Commander you dispose of the charge against Private A.B., and reserve the charge against Private C.D. for the Commanding Officer's disposal.

Explain fully the action you would take to ensure that—

(*a*) A correct record of the disposal of Private A.B. is entered in the guard report.

(*b*) The case of Private C.D. comes before the Commanding Officer in due course for disposal.

(*c*) State the nature of the entry which would be made in the guard report in the case of Private A.B.

A. 1. (*a*) I should report to the orderly-room that I had disposed of the case, and how it was disposed of. This would be done on A.F. B 252. **K.R., 485.**

(*b*) I should send the charge on A.F. B 252 to the orderly-room for entry in the guard report before the hour fixed for the disposal of prisoners by the Commanding Officer. **K.R.. 485.**

(*c*) An entry would be made against his name in the punishment column of the guard report as follows:—Disposed of on A.F. B 281. **K.R., 485.**

Q. 2. (*a*) What must be proved before a confession can be received in evidence before a Court-Martial?

(*b*) In what circumstances only should a recommendation to mercy usually be made by a Court-Martial?

A. 2. (*a*) The circumstances under which it was made must be proved to show affirmatively that it was entirely free and voluntary.

Man., VI., 74.

(*b*) When the Court has no discretion as to the sentence under ss. 16 or 41, or when the offence is very serious so that the Court consider they must pass a severe sentence to mark their sense of its gravity, but at the same time, owing to the good character of the accused or other exceptional circumstances, they do not wish him to actually suffer this heavy sentence. **Man., V., 88.**

Q. 3. (*a*) Serjeant W.Y. was promoted to that rank on the 3rd April, 1909. On the 15th November, 1912, he was sentenced by a Court-Martial to take rank and precedence as if his appointment to the rank of serjeant bore date the 3rd day of April, 1912. Explain the effect of this sentence.

(*b*) What is the difference between a "mitigation" and a "commutation" of a sentence passed by a Court-Martial?

A. 3. (*a*) Sergeant W. Y. will only reckon his seniority as a serjeant from the 3rd April, 1912, but he will continue to reckon his service in that rank from the date of his original promotion —the 3rd April, 1909. **s. 44,** *note* 12.

(*b*) "Mitigation" is a partial remission of a sentence, and means awarding less punish-

ment of the same kind, e.g., reducing a sentence of detention to a shorter term. "Commutation" is changing the nature of the punishment to one lower in the scales of punishment laid down in s. 44. s. 57 (*notes*).

Q. 4. While on active service Private J.S. of your company, whose character is not satisfactory, is transferred to another corps.

What action should be taken to acquaint the Commanding Officer of the unit he joins of the character borne by J.S.?

A. 4. A memorandum assessing his character up to date, the total number of cases of drunkenness, and date of last entry will be sent with him. As his character is not satisfactory, a short explanatory note showing in what way he is unsatisfactory will be added. K.R., 1927.

Q. 5. The 2nd Bn. ——shire Regiment proceeds on active service, and the "Albany Rifles," a force raised in a Colony, is serving with a part of His Majesty's Regular Forces in the country in which the operations are taking place. No. 235, Private F.G., of the 2nd Bn. ——shire Regiment, who has been absent without leave from his Regular unit, is found to be serving in the "Albany Rifles," into which he enlisted at X——, on the 15th September, 1912. Private F.G. is handed over to his Regular unit for disposal, and is remanded for trial by a District Court-Martial.

Prepare for transmission with the application for the soldier's trial a charge sheet to meet the case.

A. 5. CHARGE SHEET.

The accused, No. 235, Private Frank Green, 2nd Bn. ——shire Regiment, a soldier of the Regular Forces, is charged with—

s. 13 (1) **Fraudulent enlistment,**

in that he

at X——, on the 15th September, 1912, when belonging to the ——shire Regiment, without having fulfilled the conditions enabling him to enlist, enlisted into the "Albany Rifles," a regiment raised by a Colony.

H. C. BLACK, Lt.-Col.,
Commg. 2nd Bn. ——shire Regt.

Waterloo,
5th December, 1912.

s. 13 (1); R.P., 10, 11, App. I.

Q. 6. At his trial by Court-Martial Private F.G. pleaded "guilty," and, after the effect of his plea and the nature of the charge had been fully explained to him, he still adhered to that plea. In his statement in mitigation of punishment, however, he stated that when he absented himself from his Regular unit he intended to return, but got drunk and did not know what he was doing at the time of his enlistment into the "Albany Rifles."

(*a*) What procedure should the Court adopt in such a case?

(*b*) Why should that procedure be adopted?

A. 6. (*a*) The Court should alter the record and enter a plea of "not guilty," and proceed to try him on that plea. **R.P., 37 (D).**

(*b*) Because it is evident from his statement that he does not understand the effect of his plea of "guilty," and that he made this plea in error. **R.P., 35** (*notes*).

Q. 7. On the 30th September, 1912, the Court-Martial sentenced Private F.G. to undergo Field Punishment No. 2 for a period of 84 days, and to forfeit all ordinary pay for a period of three months. The sentence was duly confirmed.

(*a*) Give a full description of Field Punishment No. 2.

(*b*) Specify, giving dates, the actual period during which the ordinary pay of Private F.G. would be forfeited by the sentence of the Court.

A. 7. (*a*) The offender may be kept in irons, and secured to prevent his escape, and may be subjected to the same hard labour and restraint as though he were undergoing a sentence of imprisonment with hard labour. He will forfeit his pay for every day he is undergoing the punishment. If his unit is on the move he will march with his unit, carrying his arms and equipment, and will perform all his military duties and extra fatigues, and be treated as a defaulter.

ss. 44 proviso (5), 138 (1); Man., pp 721, 722.

(*b*) The forfeiture will commence on the date of award, viz., 30th September, and continue till the 29th December, both dates inclusive, as the word "month" in a sentence means "calendar month."

s. 44 proviso (6); R.P., 134 (c).

MAY, 1913.

Lieutenants.

Q. 1. A state of war exists, and the battalion to which you belong is ordered to proceed abroad to the seat of war. The battalion proceeds by sea to the port of disembarkation, and on arrival there your Company is told off for baggage fatigue. When the duty is finished, you call the roll of your Company, and find that a private is then absent who was present when the Company paraded for baggage fatigue. You make a thorough search for him, and he is ultimately found concealed behind some empty cases in the hold of the vessel.

With what offence can the soldier be charged, and what is the maximum penalty for that offence?

A. 1. When on active service, attempting to desert His Majesty's Service. The maximum punishment is death. ss. 12 (1), 189 (1).

Q. 2. The Division to which your unit belongs is ordered to the front, and on the night of the 3rd March, 1913, you are ordered to entrench a position near the crest of a hill, and, with your company, which consists of two subalterns of upwards of two years' service, and 100 non-commissioned officers and men, to hold it at all hazards until relieved. You occupy the position and entrench it. Shortly after daybreak on the morning of the 4th March, when inspecting the position, unaccompanied by anyone, you notice a camp follower of your

company signalling to a body of the enemy, and pointing out to them the position you have occupied.

The Division has, in the meantime, moved on to a position 15 to 20 miles distant, and in these circumstances you consider it desirable to try the camp follower by Field General Court-Martial. You hold the rank of Captain.

(*a*) Have you power to convene the Court?

(*b*) Before convening such a Court, on what points must the Convening Officer first satisfy himself?

A. 2. (*a*) Yes, being in command of a body of troops on active service.

The camp follower is subject to Military Law, and can be tried by any Court except a Regimental Court-Martial.

ss. 49 (1), 176 (10). 184 (1).

(*b*) He must satisfy himself that it is not practicable to try the man by an ordinary General Court-Martial, and as he is not a Field Officer or a Commanding Officer that it is not practicable to delay the trial for reference to a superior officer.

R.P., 105 (c).

Q. 3. The Convening Officer, having satisfied himself in respect of the matters referred to in the preceding question, decides to order a Field General Court-Martial for the trial of the offender.

(*a*) How should the Court be constituted? Give the reason for your answer.

(*b*) Under what section of the Army Act should the charge be framed?

(*c*) In what respect, if any, would the Court, as so constituted, be limited as regards the sentence they could award?

A. 3. (*a*) The Court should be composed of the two subalterns, the senior being appointed President. They are both eligible, as they have over one year's service. If it is not practicable to detail three officers, the Court can consist of two only. The Convening Officer could appoint himself as the President, but in this case he is the only witness for the prosecution, and therefore is disqualified from serving.

s. 49 (1), (*b*), (*c*) ; **R P.** 106, 107 (A).

(*b*) Under s. 4 (3).

(*c*) As the Court consists of only two officers, they cannot give any punishment exceeding field punishment or two years' imprisonment. s. 49 (1), (*d*) ; **R.P.**, 11 (B).

Q. 4. The Field General Court-Martial sentenced the offender to undergo Field Punishment No. 1 for a period of three months.

To whom should the proceedings be forwarded for confirmation?

A. 4. To the nearest available Senior Officer, not below the rank of a Field Officer.

s. 54 (1) (*d*) ; **R P.**, 120 (E).

Q. 5. On the 15th March, 1913, your company is relieved, and you proceed to rejoin the headquarters of your unit. Two days later you are attacked by the enemy, and after a desperate resistance your company is overwhelmed, the survivors, including yourself, being made prisoners of war. On the 17th April, 1913, however, during an engagement, you and five privates of your company manage to escape and rejoin the headquarters of your own Division.

A Court of inquiry is held regarding the circumstances under which you and your men were captured by the enemy.

(*a*) Is the evidence taken on oath?

(*b*) Are the members of the Court themselves sworn, or do they make a declaration?

(*c*) Does such a Court record any opinion on the conduct of those concerned?

A. 5. (*a*) Yes. R.P., 124 (II).

(*b*) The members of the Court are not sworn, but they make a declaration on honour.
R.P., 124 (I).

(*c*) The Court records an opinion as to whether the officer and men were taken prisoners by the chances of war or through their own neglect or misconduct. R.P., 124 (II).

Q. 6. At the termination of the war, the battalion to which you belong returns to England, and you are sent in command of a detachment.

Four men come to the guard room and wish to surrender themselves as deserters, or absentees without leave.

A. B. is dressed in the uniform of the corps to which you belong, and is identified by the non-commissioned officer of the guard as a deserter from that corps.

B. C. is dressed in plain clothes, and states that he is a deserter from a corps other than that to which you belong.

C. D. is dressed in the uniform of the Royal ——shire Regiment, and states that he is a deserter from the 1st Battalion of that corps, which is quartered at home.

D. E. is dressed in uniform, and states that he is an absentee without leave from the Royal Field Artillery, and produces a pass form, from which it appears that he has been absent without leave for a period of 48 hours.

State briefly the action you should take in each case.

A. 6. A. B. should be at once taken into military custody.

B. C. should be handed over to the civil police to be dealt with under s. 154 of the Army Act.

C. D. should be required to sign a written confession, giving his number, name and regiment, and date and place of desertion. I should then ascertain by telegraph from the Officer Commanding his unit if these statements were true, and if so ask him to send an escort for C. D., who would meanwhile be detained in military custody.

D. E. would be treated in a similar manner, except that, with his Commanding Officer's consent, I should give him a warrant to rejoin instead of an escort being sent for him.

In the two latter cases I should send the Commanding Officers, at once, a certificate of the fact of the man's surrender, with place and date. s. 154; K.R., 517.

Q. 7. At a Regimental Court-Martial, of which you, as a captain, are president, a soldier was charged with drunkenness, to which offence he pleaded "Not guilty." The evidence against and for the accused was of equal weight, but the Court ascertained, during the course of the trial, that a witness, who had full knowledge of the facts of the case, whose attendance could reasonably be procured, had not been called by either party.

In what circumstances would the Court—

(*a*) be justified,

(*b*) not be justified,

in calling the witness in question?

A. 7 (*a*) The Court would be justified in calling this witness at any time before the finding, if

they considered it in the interest of justice to do so, but this power should be sparingly used.

(*b*) The Court would not be justified in calling this witness to repair any negligence on the part of the prosecution.

R.P., 76 (*note*) 86 (D) and *note*.

DECEMBER, 1913.

Lieutenants.

Q. 1. In what circumstances does a soldier of the Regular Forces become liable to transfer to general service?

A. 1. Whenever he has been convicted by Court-Martial of desertion or fraudulent enlistment, or his trial for these offences has been dispensed with under s. 73; or when he has been sentenced by Court-Martial to not less than three months' detention. s. 83 (7).

Q. 2. On active service a Commanding Officer awards a private soldier 14 days' field punishment. In what documents is a record of the offence and of the punishment made?

A. 2. At the time the man's company commander will enter the offence and the punishment in his field conduct sheet; at the end of the war, or, if the man goes home sooner, this entry will be copied into his regimental and company conduct sheets by the Officer in Charge of Records. K.R.. 1922, 1926. 1927

Q. 3. There are three errors in the following charge sheet. Specify them.

Charge Sheet.

The accused, 2nd Lieutenant John Robertson, 2nd Bn. Royal ——shire Regiment, an officer of the Regular Forces, is charged with—

s. 40. Drunkenness on duty
in that he, at Albuhera Barracks, Aldershot, on

the 10th December, 1913, when on duty, was drunk.

JAMES SMITH, Captain,
Adjutant, 2nd Bn. Royal ——shire Regt.

Aldershot,
15th December, 1913.

A. 3. (i.) The charge should be laid under s. 19 and not s. 40.

(ii.) The statement of the offence should be "Drunkenness" only, and the statement of the particulars should specify the nature of the duty, on which the accused was.

(iii.) The charge sheet should be signed by the Commanding Officer.

s. 19; R.P., 9 *note*, **App. I., p. 654; Man., III., 25.**

Q. 4. You are quartered at X., at which station the usual hour for the commitment and release of soldiers under sentence is 4 p.m. On the 10th December, 1913, the Officer Commanding the unit to which you belong awards Private G.H., 10 days' detention, and Private J.K., 96 hours' detention for offences committed by them. It is ascertained that there is room in the detention barracks for only one of them, and Private G.H. is committed to the detention barracks on the day of award.

Private J.K. is not, however, received into the detention barracks until the usual hour on the 13th December, 1913. When will each of the two men be due for release from the detention barracks?

A. 4. Private G.H. will be released at 4 p.m. on the 19th December, 1913.

Private J.K. will be released at 4 p.m. on the 15th December, 1913. **R.P., 6 (A).**

Q. 5. As a Captain, you are in command of a company and dispose of the following offences, viz.:—

(*a*) Private A.B., for drunkenness in barracks on the 13th October, 1913.

This man has three previous entries for drunkenness recorded against him; the first on the 15th December, 1912, the second on the 6th March, 1913, and the third on the 10th April, 1913. He was also undergoing detention from the 9th July until the 5th August, 1913.

(*b*) Lance-Corporal C.D., for neglect of duty when orderly-corporal.

(*c*) Private E.F., for absence without leave from 9.30 p.m. on the 5th till 9.45 a.m. on the 6th October, 1913.

What is the maximum punishment you are empowered to award in each case?

A. 5. (*a*) Private A.B.—Fined 7s. 6d.

K.R., 497, 501, 512.

(*b*) Lance-Corporal C.D—Reprimanded.

K.R., 499.

(*c*) Private E.F.—7 days' C.B. He will also forfeit two days' pay.

ss. 138 (1), 140 (2); K.R., 495. 501; R.W., 977, 978.

Q. 6. On the 5th June, 1913, a soldier of the Regular Forces was sentenced by a District Court-Martial to undergo detention for a period of six months, and was admitted into a detention barrack to undergo his sentence.

While undergoing detention he committed another serious offence for which, on the 5th October, 1913, he was sentenced by a District Court-Martial to two years imprisonment with hard labour and to be discharged with ignominy. Show clearly in what respect, if any, the sentence awarded on the 5th October, 1913, is irregular.

A. 6. The sentence of imprisonment is in excess of what the Court can award, as the accused has already

been in detention for 122 days, and as by the Army Act no one can, under one or more sentences be kept in confinement for more than two years consecutively, the maximum sentence of imprisonment the Court could award is 20 months, which would expire on 4th June, 1915, i.e., two years from the date of the first sentence. s. 68; K.R., 585.

Q. 7. As a captain, you are appointed as President of a Regimental Court-Martial, held for the trial of a private soldier of the Regular Forces, and at the trial the accused, who has pleaded not guilty to the charge preferred against him, states that he intends to call witnesses to the facts of the case, other than himself.

(*a*) State briefly the procedure which should be adopted from the time the prosecution is closed until immediately before the finding.

(*b*) If the accused did not give his own evidence until after he had heard that of his other witnesses, would the Prosecutor be justified in commenting on the fact?

A 7 (*a*) The accused may make an opening address; he then calls his witnesses and examines them and they can be cross-examined by the Prosecutor; if he gives evidence himself, he should do so before calling any of his witnesses; he is not bound to this, but the Court should warn him that the value of his evidence may be lessened by his not doing so. The accused can then make a second address; and finally the Prosecutor can make an address in reply, summing up the whole case. R.P. 41 and *notes*.

(*b*) Yes. R.P. 41 (B) *note* 3.

APRIL, 1914.

LIEUTENANTS.

Q. 1. At his trial by a District Court-Martial, the accused pleaded guilty to the charge preferred against him. What action should the President take, on behalf of the Court, before recording the plea of guilty as the finding of the Court?

A. 1 He should ascertain that the accused understands the nature of the charge, and the effect of his plea, and the difference in the procedure, viz.: that the Court will find him guilty without any evidence being taken. R.P., 35 (B).

Q. 2. A soldier of the Regular Forces was arraigned before a Court-Martial on a charge of making a false accusation against an officer, knowing such accusation to be false.

(*a*) Under what section of the Army Act would the offence fall?

(*b*) State briefly what should be proved in evidence to substantiate the charge.

A. 2. (*a*) Under s. 27 (1).

(*b*) It must be proved

(i.) That the accusation as laid in the charge was made by the accused;

(ii.) That it was made against an officer;

(iii.) That it was false; and

(iv.) That the accused knew it was false when he made it. R.P., 39 (B)., *note* 3.

Q. 3. State briefly the difference between the offence of desertion and that of fraudulent enlistment, giving an example in each case to illustrate your answer.

A. 3. Desertion is the offence of a man absenting himself with the intention of permanently quitting His Majesty's Service, or of avoiding a particular, important duty;

e.g., A man is warned for a draft for embarkation for service abroad, and absents himself till the ship has sailed. This is desertion. s. 12; Man. III., 13, 16.

Fraudulent enlistment is the offence of a soldier of the Regular Forces quitting his own corps and improperly enlisting into another corps or the Royal Navy, or in the case of the Territorial Force when embodied enlisting into the Regular Forces. In this case the man evidently does not mean to quit the Service altogether.

e.g., A soldier of the Coldstream Guards absents himself and enlists into the Royal Artillery. s. 13; Man. III., 21.

Q. 4. Private B., a soldier of the Regular Forces, absented himself from the 1st Bn. ——shire Regiment on the 1st January, 1911; enlisted into the Corps of Hussars on the 3rd January, 1911, and continued to serve in the latter Corps.

On the 1st January, 1914, he was awarded 14 days' detention by his Commanding Officer, and, on being admitted into a detention barrack on the 3rd January, 1914, to undergo his punishment, he was recognised as having belonged to the 1st Bn. ——shire Regiment, and the offence which he committed on the 3rd January, 1914, was brought to light.

T 2

Would that soldier be liable to trial by Court-Martial in respect of the offence which he committed on the 3rd January, 1911? Give the reason for your answer.

A. 4. Yes, he is liable to trial, because the offence is fraudulent enlistment, which can be tried after three years, unless the man has served in an exemplary manner for three years; *i.e.*, clear of a regimental entry. Pte. B. was awarded a regimental entry the day before his three years had expired, so is liable to trial.

ss. 13, 161; K.R., 489, 1919 (vi).

Q. 5. Private Jones, who was detailed for picquet duty on the 15th October, 1913, absented himself without leave at 6.30 p.m. on that date, and returned to barracks, sober, at 11.30 p.m. on the 15th October, 1913. At 7 p.m. on the date of his absence another soldier had to go on picquet in the place of Private Jones.

As Officer Commanding the Company to which Private Jones belongs you dispose of the offence.

(*a*) What is the maximum punishment you could award?

(*b*) What forfeiture of pay, if any, would Private Jones be liable to, on account of his absence?

(*c*) Would this forfeiture of pay be an award, and would the soldier have a right to elect trial by Court-Martial in respect of the forfeiture.

A. 5. (*a*) 7 days' C.B. K.R., 501.

(*b*) 1 day's pay, because although his absence was for less than six hours, another man had to take his duty.

ss. 138 (1), 140 (2); R.W., 977 (A).

(*c*) It is not an award; but as the finding involves forfeiture of pay, the man has a right to claim trial by Court-Martial.

s. 46 (8).

Q. 6. On active service, while an Infantry battalion was temporarily detached from the Brigade to which it belonged, the Lieutenant-Colonel Commanding the battalion convened a Field General Court-Martial for the trial of a soldier under his command, and the Court sentenced the accused to death. Could the Commanding Officer of the Infantry battalion—

(*a*) Confirm the proceedings of the Court?

(*b*) On his own authority order the sentence to be carried into effect?

A. 6. (*a*) Yes; he could confirm the proceedings.

R. P. 120 (E), (ii).

(*b*) No; he must refer the sentence to the Commander-in-Chief in the Field, unless he commutes it to a punishment less than detention; or unless he is of opinion that by reason of the nature of the country, the great distance, or the operations of the enemy, it is impracticable to refer it, in which case the sentence may be executed by order of the General or Field Officer Commanding the Force with which the accused is present. R.P. 120 (D).

Q. 7. When quartered at a home station a private absented himself without leave at 5 p.m. on the 21st October, 1913.

(*a*) What is the earliest date on which a Court of Inquiry could legally be assembled to inquire into his illegal absence? Give the reason for your answer.

(*b*) If the soldier afterwards surrendered himself in uniform at 9 a.m. on the 18th November, 1913, in what circumstances could a Commanding Officer deal summarily with the offence without reference to superior authority?

(*c*) Assuming that the Commanding Officer did deal with the case summarily, what is the maximum punishment he could award?

A. 7. (*a*) The 12th November, 1913. Because it has been ruled that the 21 days must be reckoned exclusive of the day of absence and day the Court is held.

s. 73 (i), *not* 1; K.R. 673.

(*b*) If the soldier can show that he intended to return all the time, his offence will be absence without leave and not desertion; and the Commanding Officer can dispose of it without reference to superior authority. ss. 12, 15 (i); K.R. 487.

(*c*) 28 days' detention.

s. 46 (2). (5), (9); K.R., (493) (i). 494 (1).

APPENDIX B.

MAY, 1910.

Captains.

Q. 1. You are in command of a detachment when a man in uniform surrenders himself as a deserter from another regiment. What steps are to be taken by you—

(*a*) If his confession is true?

(*b*) If his confession is false?

A. 1. (*a*) I should obtain a written confession from him, with his number, name, corps, and date and place of desertion, and ascertain by telegraph from the Officer Commanding his unit, if at home, otherwise from the Officer in charge of Records, if his confession is true. If so, he would be removed by an escort sent from his unit.

(*b*) If the confession is false he would be proceeded against before a Court of Summary Jurisdiction. **s. 152; K.R., 517.**

Q. 2. You are asked by a soldier of your regiment to act as "friend of the accused" at his trial by District Court-Martial, which is shortly to take place. To what privileges are you entitled in that capacity during the hearing of the case before the Court-Martial?

A. 2. To all the rights and privileges of a Counsel; that is the same right as the accused would have to call and examine and cross-examine witnesses, to make any objection or statement, to address the Court, to put in any plea, to inspect the Proceedings or any other right. **R.P., 87 (b), 89 (c).**

Q. 3. At his trial by Court-Martial the accused puts in a "plea in bar of trial."

(*a*) What does this expression mean?

(*b*) What procedure does the entry of such a plea involve?

A. 3. (*a*) This plea means that the Court are barred from trying him on the charge in respect to which it is offered, either because he has been previously acquitted or convicted of the charge, or the offence has been condoned or is barred by lapse of time since its commission.

(*b*) The Court record the plea and hear any evidence offered and any addresses made by the accused or the Prosecutor with reference to it. If they find the plea not proved, they proceed with the trial; if they find it proved, they adjourn and notify it to the Convening Authority, who, if he does not confirm the finding, may reassemble the Court who will proceed with the trial. **R.P., 36.**

Q. 4. (*a*) Explain by an example what is meant by the term "leading question."

(*b*) When is it permissible to put such questions to a witness?

A. 4. (*a*) A leading question is one which suggests or invites the answer required, as for example—"Did you see the accused strike Serjeant A"? **Man., VI., 107.**

(*b*) Such questions may always be asked in cross-examination; but in the examination-in-chief only when purely introductory, or with the leave of the Court in the case of a very young witness or one clearly mentally deficient, or in the case of a hostile witness. **Man., VI., 110–112.**

Q. 5. "Hearsay is not evidence."

(*a*) State briefly to what statements the term "hearsay" is applicable.

(*b*) Indicate by examples exceptions to the rule above quoted

A. 5. (*a*) Hearsay includes any oral or written statement of a person, who is not produced in Court, conveyed to the Court either by a witness or the instrumentality of a document.

Man., VI., 46; Powell, p. 132.

(*b*) (i.) Dying declarations, *e.g.*, where A is being tried for the murder of B, a statement made by the latter, when in immediate fear of death, as to how he came by his death is admissible.

Man., VI., 49, 50.

(ii.) Statements forming part of the *res gestæ*, *e.g.*, the cries and exclamations of a person being assaulted and beaten can be given in evidence by a witness who heard them. **Man., VI., 51.**

(iii.) Statements against self-interest by a person since deceased, *e.g.*, an acknowledgment of having received a certain sum of money. **Man., VI., 55.**

(iv.) Statements made in the course of duty by a person since deceased, *e.g.*, a report made by a constable to his superior officer that he was going to watch the prisoner's movements.

Man., VI., 56.

Q. 6. Give your opinion as to the admissibility as evidence at the trial by Court-Martial of an Officer under s. 10 (1) of the Army Act (striking an Officer) of the following:—

(*a*) Proceedings of the Court of Inquiry previously held to inquire into the matter.

(*b*) Evidence, for the prosecution, of the wife of the accused.

(*c*) Evidence, for the prosecution, as to the accused being a man of hasty temper, and that he has previously been seen striking his servant.

A. 6. (*a*) The Proceedings of a Court of Inquiry are inadmissible as evidence against an accused, except when charged under s. 29.

R.P., 124 (L).

(*b*) The wife of an accused person can only be called as a witness with his consent; her evidence would, therefore, be inadmissible for the prosecution. **R.P., 80 (1).**

(*c*) Evidence tending to show a general disposition to commit an offence is irrelevant and, therefore, inadmissible. **Man., VI., 20.**

Q. 7. What is meant by the expression "should be judicially taken notice of by all judges and in all Courts"? Give examples to illustrate your answer.

A. 7. The expression means that certain well-known facts are recognized by all Courts without the necessity for proving them, *e.g.*, all public Acts of Parliament, the course of proceedings in the Supreme Court, the accession of the Sovereign, etc. All Courts are required to judicially notice the Rules of Procedure, and Courts-Martial are to take judicial notice of all matters within their general military knowledge.

s. 70 (3); R.P., 74; Man., VI., 10, 11.

Q. 8. "As a general rule every charge alleges, or ought to allege, a specific offence, constituting a breach of a specific enactment, and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted."

(*a*) Show how provision is made in the Army Act for legalizing convictions for offences other than those set out in the charge, in certain cases, and give instances of such exceptions as are referred to in the above quotation from the "Manual of Military Law."

(*b*) Suggest a better expedient for obviating recourse to the above provisions in dealing with such offences.

A. 8. (*a* Where the distinction between two offences is chiefly purely technical, a person charged with one may be found guilty of the other; and where an offence is charged as having been committed under circumstances involving a heavier punishment, the accused can be convicted of having committed the offence under circumstances involving a less punishment. **s. 56; Man., VI., 8.**

(*b*) In some cases the technical difference between such offences might be abolished and one offence substituted for both, *e.g.*, the legal distinction between theft and embezzlement.

Q. 9. Criticize the following instances of the application of the provisions of the Army Act.

(*a*) A soldier who is already undergoing 6 months' detention is sentenced by Court-Martial on the last day of his punishment to 2 years' imprisonment for a fresh offence.

(*b*) A Court-Martial sentences a soldier to 6 months' detention and to be discharged with ignominy. The Confirming Officer returns the proceedings and commutes the sentence of imprisonment to a similar period of detention. The man is discharged with ignominy at the expiration of his sentence.

(*c*) A Court-Martial, the proceedings of which are being constantly and offensively interrupted by a soldier spectator, orders him to undergo detention for 21 days.

A. 9. (*a*) This sentence is in excess of what the Court can award in this case, as no one is subject to imprisonment or detention for more than two consecutive years, either under one or more sentences. **s. 68 (2).**

(*b*) Apparently the first word "detention" is misprint for "imprisonment," otherwise the question is quite unintelligible. Even assuming this misprint the question is not very clear. Presumably the Proceedings were returned for revision of finding or sentence, or both, but it is not so stated, or what the action of the Court was. The Confirming Officer is in error in not remitting the discharge with ignominy when commuting the imprisonment into detention. In practice the man would not have been discharged, as the error would have been detected in the Judge-Advocate-General's office. **s. 44 (4); K.R., 583 (viii.).**

(*c*) This is within the power of the Court. **s. 28.**

Q. 10. (*a*) At a District Court-Martial one of the members is absent during part of the hearing. The President decides to go on without him. What effect will this have on the proceedings?

(*b*) Explain the procedure involved by the death of the President during the hearing of the case.

A. 10. (*a*) The member who has been absent can take no further part in the trial; if the Court is not thereby reduced below the legal minimum the trial can proceed; if, however, it is so reduced, the President must adjourn the Court, which will be dissolved.

s. 53 (1); R.P., 68 (A).

(*b*) The senior member must adjourn the Court and report the circumstances to the Convening Officer, who, if the Court still consists of the legal minimum, with enough officers of required rank in the case of a General Court-Martial, may appoint the senior member President if he is of required rank. If the above conditions are not all fulfilled he must dissolve the Court. **s. 53 (2).**

DECEMBER, 1910.

Captains.

Q. 1. Distinguish between the offences of "fraudulent enlistment" and "false answer on attestation."

A. 1. *Fraudulent enlistment* is the offence committed by a soldier of the Regular Forces, or a man of the Territorial Force, when embodied, who, without fulfilling the conditions enabling him to do so, enlists or enrols into any part of His Majesty's forces or any force raised in India or a Colony. **s. 13.**

False answer on attestation is any false answer to any of the questions on the Attestation Paper answered by a recruit on attestation, which does not amount to fraudulent enlistment as above defined. **s. 33.**

E.g., an Army Reservist recalled to service, or an embodied Territorial improperly enlisting, would be guilty of *fraudulent* enlistment; but a Reservist out for training or a Territorial at annual camp so enlisting would be guilty of *false answer*.

Q. 2. A fire occurs in the Quartermaster's stores of your regiment, resulting in loss and damage to Government property and stores to the extent of £50.

(*a*) What are the steps to be taken to investigate the origin of the fire and the extent of the loss?

(*b*) In the event of no blame being attached to anyone, what would be the procedure as to the amount of the loss?

A. 2. (*a*) A Court of Inquiry will be assembled to investigate the cause of the fire, and the extent of the loss. **K.R., 670, 1030, 1031.**

(*b*) As the loss does not exceed £50, and no blame attaches to anyone, the General Officer in charge of Administration, or General Officer Commanding can write it off.

K.R., 670, App. XXII.

Q. 3. Quote the Regulations as to the trial and punishment of warrant officers by Court-Martial.

A. 3. Warrant Officers holding honorary commissions can only be tried by a General, or a Field General Court-Martial, and can only be sentenced to punishment as officers. **ss. 47 (5), 48 (6), 49 (1), 190 (4).** Other Warrant Officers cannot be tried by a Regimental Court-Martial, and, if tried by a District Court-Martial, the President cannot be under the rank of Captain. **s. 182 (1), (4).** They can be sentenced as soldiers, except that a District Court-Martial can only sentence them to forfeitures, fine, stoppages, to dismissal, to reduction to the bottom or any other place in the rank, or to an inferior class of warrant officer, or to a lower grade, or, if originally enlisted as a soldier, to the ranks. **ss. 44, 182 (2).**

Q. 4. (*a*) Indicate the directions in which the powers of a Commanding Officer as to punishment have been recently increased.

(*b*) At what dates do these increased powers become exercisable in the various commands?

(*c*) With what object have these powers been so increased?

A. 4. (*a*) He can now award detention up to twenty-eight days instead of fourteen; and the limit of a combined award of detention and confinement to barracks is now twenty-one days instead of fourteen.

A. Ann. Act, 1910, s. 4; K.R., 493 (iv), 494.

(*b*) In the United Kingdom and Channel Islands from 30th April, 1910; elsewhere from 31st July, 1910. **A.O.**, $\frac{105}{10}$.

(*c*) To enable a Commanding Officer to dispose of offences which previously had been dealt with by Court-Martial, so that in future the assembly of a Regimental Court-Martial should be of rare occurrence. **A.O.**, $\frac{105}{10}$.

Q. 5. A colour-serjeant whose accounts have been found to be incorrect is permitted by his Commanding Officer to resign his rank instead of standing his trial by Court-Martial.

(*a*) Criticize the procedure adopted by the Commanding Officer.

(*b*) Would any entry be made in this non-commissioned officer's document of such resignation; if so, where?

A. 5. (*a*) The Commanding Officer should not have permitted this resignation without the previous sanction of an officer not below the rank of Brigadier-General. **K.R., 301.**

(*b*) An entry of the resignation will be made in his Military History Sheet in his Attestation Paper, and signed by him and the Commanding Officer. **K.R., 301, 1913 (i).**

Q. 6. Indicate the difference in procedure at a Field General Court-Martial as compared with an ordinary Court-Martial.

A. 6. The Court may be convened and the Proceedings recorded in a special form, given in the second Appendix to the Rules of Procedure, which is very much shorter than the one used at ordinary Courts; but, if possible, a short summary of the evidence of each witness is to be attached to the Proceedings. If the Convening Officer certifies that military exigencies or other circumstances prevent the use of even this abbreviated form,

the Court can be carried on without any writing, except that the Provost Marshal or his Assistant, if present—or, in their absence, the President—must keep such a record as is possible, giving at least the name or description of the accused, the charge, finding, and sentence, with the minute of confirmation and any recommendation to mercy.

R P , 107, 114 (C).

Instead of a regular charge sheet, the charge may be made briefly in any language sufficient to describe the offence and show that it was one against the Army Act. **R.P., 108.**

In the event of a challenge it is allowed if any one member of the Court is in favour of it, instead of the proportion required at ordinary Courts.

s. 51 (3), (5); R.P., 110 (B).

Sentence of death cannot be passed unless the Court are unanimous, instead of only a two-thirds majority being required.

ss. 48 (8), 49 (2) ; R.P., 118 (A).

Q. 7. (*a*) Under what section of the Army Act has the accused the right at his trial by Court-Martial to object to any member of the Court ?

(*b*) Does this include the right to object to the President and the Prosecutor ?

(*c*) Give an instance of what would be good grounds for such an objection being upheld.

(*d*) What procedure is involved by such an objection being lodged ?

A. 7. (*a*) **s. 51 (1).**

(*b*) It includes the President, but not the Prosecutor. **s. 51 (1) ; R.P., 25 (B).**

(*c*) On the ground that the officer objected to had been known to have previously expressed his opinion on the case to be tried.

R.P., 25 (A) *note*.

(*d*) The officer objected to withdraws, and the question is decided by the other members of the Court. The accused states his objection and can call evidence (not on oath) in support. The Court is then closed to consider their decision. If the objection is to the President, it is allowed if one-third are in favour of it; if to a member, it is allowed if one-half are in favour of it. If the objection to the President is allowed, the Court must adjourn and the senior member report to the Convening Officer that he may appoint a fresh President. If the objection to a member is allowed, a waiting member will be taken in, if there is one; if not, the Court will adjourn, as in the case of the President.

s. 51; R.P., 25.

Q. 8. Show the distinction between causes which may prevent a witness from giving evidence on the grounds that he is "incompetent," and those which might prevent the evidence of a "competent" witness being received on the ground that it is "inadmissible."

A. 8. A lunatic is "incompetent" to give evidence except during lucid intervals, so is a drunken person while under the influence of drink. A member of a Court-Martial is "incompetent" to give evidence for the prosecution. **Man., VI., 87, 90.**

Although a witness may be competent, his evidence may be inadmissible for various reasons; *e.g.*, that it is "irrelevant," or "hearsay," or (except in certain cases) "opinion." **Man., VI., 15–20.**

Q. 9. Indicate the proper course to be pursued in the following circumstances, giving the authority of the Army Act in each case:—

(*a*) Corpl. A. in charge of a military prisoner and escort comes to a toll gate, and is requested to pay the usual toll of ½d. per head.

(*b*) A tradesman in the town obtains a warrant for the arrest of a man in your company (battery or squadron) for a debt. The amount of the debt is £24.

An officer of the Civil Court attempts to put the warrant into execution.

(*c*) Captain C., a Regular Officer living in Folkestone, is summoned to serve on a Jury in a murder case at the assizes in two days' time. He is under orders to go to Hythe for a musketry course on the same day.

A. 9. (*a*) Corporal A. should inform the toll gate keeper that under the Army Act all soldiers and prisoners under military escort are free from the payment of tolls. **s. 143 (1).**

(*b*) The officer of the Court should be informed that as the debt does not exceed £30 the man cannot be arrested or compelled to appear in person, and the Commanding Officer should refuse to surrender the man. He should write to the Court from which the warrant had issued, calling attention to the provisions of the Army Act on this point. **s. 144 (1).**

(*c*) Under the Juries Act, 1870, s. 9, Officers of the Army on full pay are exempt from serving on juries; but in England this exemption is only a qualified one, so that if Captain C's name is on the list he is bound to serve if summoned. He should have taken steps to see that his name was not on the list when made up in September annually. Under the circumstances he should write to the Court pointing out that as an Officer he would be exempt, and asking to be excused attendance to enable him to proceed to Hythe as ordered; the presiding Judge would, probably, in such a case excuse him. **Man., XI., 8** and *note.*

N.B.—*It is impossible to quote the "Army Act" in this case, as there is nothing in the Act dealing with this matter.*

Q .10. You are (as a Captain) the senior effective combatant Officer on board a hired transport going to India with drafts.

What powers are vested in you for the maintenance of discipline?

A. 10. As the senior combatant Officer on board I should be in command of the troops, and should have all the powers of a Commanding Officer, except than being only a Captain I could not award more that 7 days' detention, except for absence. I could convene a Regimental Court-Martial, and, if I had a warrant, a District Court-Martial.

ss. 46, 47, 48; K.R., 493 (i.), 1576.

MAY, 1911.

Captains.

Q. 1. What essential points is it necessary to prove, in order to convict a soldier charged with the offence of disobeying in such a manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office?

A. 1. (i.) That the command was "lawful."

(ii.) That it was given by a superior.

(iii.) That he was in the execution of his office.

(iv.) That the command was given personally.

(v.) That the accused disobeyed it.

(vi.) That he did so in such a manner as to show a wilful defiance of authority.

s. 9 (1) *notes ;* **Man., III., 8.**

Q 2. A soldier is charged with selling certain articles.

(*a*) Is it necessary to state the value of all articles of his equipment, clothing, and regimental necessaries in the particulars of the charge? Give reasons for your answer.

(*b*) Should an award of stoppages ever be made by a Court-Martial in respect of articles of necessaries and personal clothing? If so, state the circumstances in which such an award should be made.

(*c*) In the event of a soldier being convicted of stealing £3, and £1 5s. being found upon him, to what amount of stoppages will he

be sentenced by the Court? Can the sum found upon the soldier be returned to the owner? If so, by whose order?

A. 2. (*a*) Values are only stated against those articles which are Government property, the value of which has to be made good to the public. Any deficiencies in a man's personal clothing and necessaries have to be made good as a matter of account. **K.R., 563.**

(*b*) When a man is convicted of obtaining a free kit by fraudulent enlistment the Court would award stoppages for the full amount of the kit as stated in the charge, which would include the articles of personal clothing and necessaries. In the case of a man of the Special Reserve his clothing and necessaries are the property of the public, and their values would be stated and stoppages awarded by the Court.

R.P., App. I. (23); K.R. 561, 564.

(*c*) The Court should sentence him to stoppages for the full amount, viz., £3. If, however, it is proved that the £1 5s. found on him is part of the sum stolen the Confirming Authority or the Army Council can order its restitution to the owner, and actual amount stopped from the accused will only be the balance, viz, £1 15s.

ss. 75, 138 (3) and proviso (*b*); K.R., 586.

Q. 3. The Field Officer Commanding the detachment to which you belong is on sick leave, and the command has temporarily devolved upon you.

State what action you would take in each of the following cases, and give your reasons:—

(*a*) On 15th January, 1911, you receive a requisition from the Mayor of the town adjoining the barracks in which your detachment is quartered for troops to assist the civil police in quelling a disturbance. You issue orders for 100 men

to parade on the barrack square, and while they are falling in you ride into the town on a bicycle in order to ascertain the exact position of affairs. You find a crowd of 200 persons assembled in the market square, but there is no sign of a serious disturbance. An inspector of civil police informs you that he has in readiness a force of 60 police, in addition to 15 constables on duty in the market square.

(*b*) On 4th February, 1911, you receive a telegram from the civil authorities of a manufacturing town 20 miles distant from your barracks requesting the assistance of the military in aid of the Civil Power. The telegram states further that a strike of mill hands has been proclaimed, and that the strikers have expressed their intention of destroying the mill of one of the proprietors.

A. 3. (*a*) As the regulations lay down that a Commanding Officer is to use his discretion as to the necessity for complying with the requisition, I should in this case inform the Mayor that according to the present condition of affairs there was no sign of any disturbance which the police could not quell, and that therefore I should not bring out the troops, as their appearance might do more harm than good. I should tell him, however, that I would keep them ready to turn out at once should necessity arise. I should then return to barracks and give the necessary orders. I should then telegraph to the War Office and the General Officer Commanding-in Chief the fact that I had received the requisition and the action taken.

K.R., 955, 956 ;
Man., XIII., App. I. pp. 225—228.

(*b*) As the scene of disturbance is at a distance, and I could not decide before arrival as to the necessity for the employment of troops, I should give orders for what I considered the necessary number of men to parade for this duty (having regard to the strength of the detachment). I should telegraph to the authority from whom I received the requisition, informing him of the number of troops coming and the probable time of their arrival, requesting him to have them met by a magistrate and to arrange for their food and accommodation. I should then arrange with the local railway authorities for their conveyance by train (if a railway served); otherwise the party would probably have to march. I should telegraph to the War Office and the General Officer Commanding-in-Chief, informing them that I had received the requisition and my intended action. On arrival at the town my further action would depend on the state of affairs there. **K.R., 955—958, 1393; Man., XIII. App. I., pp. 228–232.**

Q. 4. Private C. D. enlisted on the 4th May, 1903, into the ——shire Regiment; for 7 years with the Colours and 5 years in the Reserve. On the 6th June, 1909, he was permitted to extend his service to complete 12 years with the Colours.

On the 8th August, 1910, he deserted from his unit then serving at Lichfield, but surrendered on the 14th September, 1910, to a police constable at Hounslow, and signed a confession of desertion.

On the 21st September, 1910, his trial was dispensed with by order of the General Officer under whom Private C. D.'s unit was serving.

(*a*) What penalties can be awarded by the General Officer when dispensing with trial?

(*b*) On what date is Private C. D. due to pass to the Army Reserve, provided his forfeited service is not restored?

A. 4. (*a*) He can award the same forfeitures and deductions from pay (if any) as a Court-Martial could have awarded, or as are consequential on conviction by Court-Martial for desertion.

s. 73 (1).

(*b*) On the 20th September, 1917.

s. 79 (2) and *note*.

Q. 5. You are acting as Prosecutor before a District Court-Martial, and during the course of the trial the accused produces a witness (other than a witness as to character) whose evidence is not contained in the summary, and for whose attendance you had not been requested to provide.

In order to rebut the evidence given by that witness, you inform the Court that you wish to give evidence yourself, and to call another witness whose name is not contained in the summary.

What action should be taken by the Court—

(*a*) As regards you (Prosecutor) giving evidence?

(*b*) As regards the evidence of the witness you wish to call?

A 5. (*a*) The rule is that except to prove a formal matter or hand in documents, the Prosecutor should never be a witness for the Prosecution, except on active service, and then he should give his evidence immediately after his opening address. The Court should therefore ascertain from the Prosecutor whether the rebutting evidence he wishes to give cannot possibly be given by some witness, and should only allow him to give rebutting evidence if satisfied that the evidence can be given by no one else, and that the interests of justice will be best served by its being given.

R.P., 39 (C), and *notes*, 86 (B).

(*b*) The Court may allow the other witness to be called before the second address of the accused, to rebut the evidence given by the witness for the defence. **R.P., 86 (B).**

Q. 6. Corporal E. F. of the detachment under your command is convicted by the Civil Power of assault, and is sentenced to seven days' imprisonment.

(*a*) What further action (if any) should be taken by you?

(*b*) Is any record kept of such conviction? If so, state the procedure.

(*c*) Should the record of such a conviction appear in the schedule of convictions produced in evidence before a subsequent Court-Martial?

A. 6. (*a*) I should report the case to my Commanding Officer, who would report it to the Brigadier, with a view to his reporting the matter to the War Office, in order that the Army Council might order his reduction.

s. 183 (2); K.R., 506.

(*b*) Application would be made to the Clerk of the Court for a certified copy of the conviction, s. 164, which would be annexed to the man's Regimental Conduct Sheet, an entry of the conviction being made in both the Regimental and Company Sheet.

K.R., 1919 (iii.), 1924.

(*c*) No; as the imprisonment does not exceed seven days. K.R., 1919 (iii.).

Q. 7. As a Captain, you are in command of an independent detachment on active service, and have under your command an infantry captain and a subaltern of the R.A.M.C. It is necessary to assemble a Field General Court-Martial at once for the trial of a soldier under your command, and you do not consider that you are available to sit on the Court.

(*a*) How would you compose the Field General Court-Martial?

(*b*) In what respects, as regards the sentence, would the powers of the Court, as so composed, be limited?

A. 7. (*a*) The Court could be composed of the infantry captain as President, and the subaltern R.A.M.C. as member. s. 49 (1) (*b*).

(*b*) The sentence cannot exceed imprisonment or field punishment. s. 49 (1) (*d*).

DECEMBER, 1911.

Captains.

Q. 1. Under what Act and by what Court should the following cases be dealt with, and to what extent can they be punished?

(*a*) A recruit in answering Question 11 of the Attestation Paper, "Have you ever served in the Royal Navy, the Army, etc., etc.?" which has been put to him by the Justice before whom he appears for the purpose of being attested for the Regular Forces, says "No." He is subsequently proved to have served in the Regular Army.

(*b*) A person who gives a false statement as to character or previous employment in connexion with a recruit who has offered himself for enlistment into the Regular Forces.

A. 1. (*a*) If it is intended to retain the man in the Service he should be tried under Army Act, s. 33, before a Court-Martial, and he is liable to two years' imprisonment. If it is intended to discharge him he should, if within six months of the date of the offence, be tried under Army Act, s. 99, before a Court of Summary Jurisdiction, and he is liable to three months' imprisonment. If more than six months have elapsed since the offence was committed he must be tried by Court-Martial. **ss. 33, 99; K.R., 522 (v.) 524.**

(*b*) Under the Seamen's and Soldiers' False Characters Act, 1906, s. 2, before a Court of Summary Jurisdiction. Penalty, a fine not exceeding £20. **s. 99 (*notes*).**

Q. 2. (*a*) What evidence is necessary to support a charge of "false answer on attestation"?

(*b*) A soldier is charged with making a false answer on attestation with regard to his age. What is your opinion as to the desirability of preparing such a charge and the possibility of its being sustained by evidence?

A. 2. (*a*) The original or duplicate Attestation Paper. s. 33 (*note*).

(*b*) It is recommended that as a rule a man should not be tried for making a false answer as to age, as it is considered that his age is not a fact within his own knowledge, and therefore it could not be proved that the answer was wilfully false. Where, however, there is evidence to show that the man did know his age and made a false answer respecting it, he should be tried. s. 33 (*note*).

Q. 3. Private A., who is being tried by Court-Martial under Section 8 (1) Army Act, "striking his superior officer being in the execution of his office," makes the following statement in his defence: "I am not a soldier, as I was never enlisted, but gave myself up as a deserter 6 months ago in place of my brother, who deserted. On giving myself up, trial was dispensed with, and I was sent back to duty in the ranks, where I have served with credit ever since. Now I am tired of soldiering and claim to be released. As for the six months' pay I have drawn, I think I have earned that by doing duty. Anyhow, I could not pay it back." On investigation the facts are found to be as stated.

Discuss the case, with especial reference to the question of Private A.'s liability to military jurisdiction and punishment for the offence of "striking," and of his claim to discharge.

A. 3. He, being in pay as a soldier, is liable to military jurisdiction and to punishment for the offence (if proved). His claim to be discharged is valid, and

the Commanding Officer must forward it through the competent military authority to the Army Council, who, as his claim is well founded, must discharge him as soon as possible. He will, however, still have to undergo any punishment to which he has been sentenced. **ss. 100, 158 (2).**

Q. 4. As acting Brigade Major you are called upon to deal with an application, dated 1st June, 1911, for the special re-engagement to complete 21 years' service of Corporal Jones, 1st Bn. ——— Regiment, who enlisted 21st May, 1902, with a view to his proceeding to India with his unit on 30th October, 1911.

Prepare a minute to the Officer Commanding 1st Bn. ——— Regiment for the signature of your Brigadier, embodying your interpretation of the Regulations, etc., on the subject.

A. 4. To O.C.
1st Bn. ——— Regiment.

Tidworth,
3rd June, 1911.

In reply to your application for the re-engagement of Corporal Jones, of the Battalion under your command, as this N.C.O. has not completed 11 years' service, he is not eligible, under K.R. 264, to re-engage. As, however, he has completed the service legally required for re-engagement by the Army Act, s. 84, I am prepared to submit the application as a special case to the Army Council, requesting them to sanction this man's re-engagement to allow him to proceed to India with his battalion.

Brig.-Gen.,
Commg. 7th Infantry Brigade.

N.B.—This minute to the O.C. 1st Bn. ——— Regiment should be signed by the Brigade Major and not by the Brigadier himself.

Q. 5. As commander of a detached company employed in suppressing strike riots you are accompanied by a magistrate, who, on the mob showing signs of renewed violence and pillage, orders you excitedly to fire.

Explain fully your legal position and responsibilities in this situation, and the action you propose to take.

(N.B.—The King's Regulations on this subject are not included in the syllabus, and should not therefore be quoted in framing your answer.)*

A. 5. Under the law, the responsibility for giving the order to fire rests on the officer, and the fact of the magistrate having told him to do so will not justify him, should he give the order unnecessarily, as no one is compelled to obey an illegal order. Should the mob, however, be actually engaged in committing a felony, or on the point of doing so, which could only be prevented by force, firing would be justifiable, and the duty of taking any immediate action necessary rests upon the officer. The fact of the Proclamation required by the Riot Act not having been read, would not prevent this action being taken, if necessary. Under these circumstances, if the mob is actually about to commit actual violence, the officer should warn them as clearly and loudly as possible that unless they desist he will open fire, and that such fire will be effective. If firing still becomes necessary, the officer should order certain named files or sections to fire, using no more force than absolutely necessary, and ordering the "*cease fire*" directly the object is attained.

Man., XIII., 32, 35.

Q. 6. (*a*) In what circumstances can a man of the Army Reserve be tried by Court-Martial?

(*b*) You are to appear as Prosecutor at the trial by Court-Martial of an Army Reservist who has failed to appear on mobilization.

---

* The paras. of the King's Regulations dealing with this subject have since been added to the syllabus. A.O. 44.

What evidence is necessary to substantiate the charge?

A. 6. (*a*) (i.) Failing on two consecutive occasions to comply with any order respecting pay.

(ii.) Without reasonable excuse, failing to attend at any place when ordered to do so.

(iii.) Using insubordinate language, or behaving in an insubordinate manner, to any officer or non-commissioned officer acting under the Reserve Forces Act.

(iv.) Obtaining fraudulently any pay or other money, or being accessary to so doing.

(v.) Without reasonable excuse, failing to comply with Regulations.

(vi.) Failing to attend when called out for annual training, for permanent service, or in aid of the Civil Power, unless with leave or prevented by sickness or other reasonable cause. **R.F. Act, ss. 6, 15.**

(*b*) Evidence that the notice to attend was delivered at his last registered address or served in the prescribed manner, or of publication in the prescribed manner of such notice in the parish in which his last registered address is situated. **R.F. Act, s. 24 (2), (3).**

Q. 7. As President of a District Court-Martial you are called upon to deal with the following situations:—

(*a*) You observe that the Prosecutor conducts the prosecution with distinct animus against the accused, and in a manner which shows his intention to procure a conviction, if possible.

(*b*) The Prosecutor, whilst pursuing a charge against the accused of drunkenness on duty, refers repeatedly to the relations of the accused towards his wife, and her failure to give evidence on his behalf.

(*c*) The accused, in conducting his defence on a second charge of falsifying his accounts, makes veiled charges of criminal complicity against the Captain of his company.

A. 7. (*a*) Caution the Prosecutor, and restrain any want of fairness on his part, reminding him of his duty to behave impartially and assist the Court. **R.P., 60 (A), (B); K.R., 575.**

(*b*) Stop him from referring to the relations existing between the accused and his wife, as being irrelevant matter. The wife can only give evidence if called by the accused, and the Prosecutor may not comment on the failure of the accused to call her on his behalf.

R.P., 60 (B), 80.

(*c*) The accused is at liberty to charge any other person with criminality, when making his defence, but, if such is irrelevant, the Court should caution him as to the irrelevance of such a line of defence. **R.P., 60 (C).**

MAY, 1912.

Captains.

Q. 1. Private A. of your regiment is found injured in circumstances which cannot be clearly explained by him, owing to his having been rendered unconscious.

(*a*) What steps should be taken to investigate the occurrence?

(*b*) The evidence at the investigation was not taken on oath, and shortly after the inquiry was held Private A. died, without having left the hospital. Would any of the answers given in evidence at the investigation by Private A. be admissible as evidence at the trial of Court-Martial of any other soldier?

A. 1. (*a*) A Court of Inquiry should be assembled. K.R. 674 (iii).

(*b*) No answers at a Court of Inquiry are evidence against anyone unless he is being tried under s. 29, for having given false evidence before the Court. R.P., 124 (L).

Q. 2. (*a*) Under what conditions can a soldier elect to be tried by District Court-Martial instead of submitting to an award of summary punishment by his Commanding Officer?

(*b*) How does the Court which tries him know that he has so claimed to be tried?

A. 2. (*a*) He can claim trial whenever the award or finding will involve forfeiture of pay, or is not a minor punishment. s. 46 (8).

(*b*) The Prosecutor informs the Court of the fact just before the accused is arraigned. R.P., App. II., p. 682.

Q. 3. Your regiment is called out in aid of the Civil power during a religious riot. Private B. conceals himself in barracks and evades the duty.

(*a*) With what offence could he be charged?

(*b*) When before the Court he pleads that as he would probably have been called upon to fire on his co-religionists, his conscience forbade him to go.

Comment on his plea in regard to his liability to trial and punishment on account of his neglect of duty.

A. 3. (*a*) Desertion. s. 12 (1) and *notes*; Man. III. 16.

(*b*) Religious scruples are no justification for refusing to obey orders or to perform any military duty. Private B. will therefore be liable to trial and punishment for his offence; but the Court in awarding sentence may possibly consider his conscientious objection as an extenuating circumstance justifying a less punishment.

Man., III 12; K R., 583 (i).

Q. 4. At his trial by Court-Martial on a charge of absence without leave the accused pleads "guilty," and the Court correctly follow the subsequent procedure laid down in the "Manual of Military Law." In making his statement in mitigation of punishment the accused says:—

"I thought my furlough had been extended as I wired to my colour-sergeant for two more days leave and received an unsigned telegram 'All right,' which I now produce. I came back before the extra two days were up."

What procedure should the Court now adopt, and why?

A. 4. The Court must alter the record and enter a plea of "not guilty," and try him in accordance with this plea; because it is clear from his statement

that he did not understand the nature of his plea of "guilty" and that he did not intend to admit that he had been wilfully absent without leave. R.P., 37 (D).

Q 5. "An endeavour to commit or procure the commission of an offence is in itself an offence, and renders a person criminally responsible, even though the endeavour is unsuccessful."

To what extent does this apply to "attempts" made by soldiers to commit military offences, and what provision is made in the Army Act for the trial of attempted offences to which it is inapplicable?

A. 5. In one or two cases attempts to commit offences are made substantive offences by the Army Act, e.g., "attempting to desert," "attempting to commit suicide." In all other cases attempts to commit military offences would be tried under s. 40. ss. 12 (1), 38, 40 *notes;* Man., III., 32.

Q. 6. What facts must be proved and what documents must be produced to secure the conviction of soldiers under trial by Court-Martial on the following (separate) charges:—

(*a*) Failing to appear at the place of parade appointed by his Commanding Officer.

(*b*) Desertion in the case of a man who has avoided embarkation for foreign service.

A 6. (*a*) That the time and place of parade was duly published in orders and that the order was posted up in the usual way prescribed by regulation, or that the accused was personally warned for the parade and told the time and place. If the parade was ordered in a written order, a copy of the order must be produced. Evidence will then have to be given that the accused was absent from the parade. It will then rest on the

accused to show that by custom or order he was not bound to attend the parade, if such were the case.

s. 15 (2) *note ;* K.R., 940.

(*b*) That the man's name had been published in orders as forming one of the draft for embarkation. A copy of this order must be produced. If possible he should also have been personally warned, and if this has been done it should be proved. Evidence will then have to be given that the accused was absent when the draft paraded for embarkation and that he did not reappear until too late for embarkation.

s. 12, *note ;* K.R., 1502, 1504.

Q. 7. As Confirming Officer you have to deal with the Proceedings of Courts-Martial in the following cases :—

(*a*) The Court have acquitted the accused in the face of what is, in your opinion, clear evidence of guilt.

(*b*) In the case of a colour-sergeant who is charged under Section 25 (1) Army Act, "in a pay list made by him knowingly making a fraudulent statement," the Court's finding is "guilty," and sentence has been passed accordingly. A recommendation to mercy is, however, added on the grounds that "in the opinion of the Court the accused was not responsible for his actions at the time."

State the course you consider correct for you to adopt in each case.

A. 7. (*a*) I should report the circumstances in a separate letter for the information of the Army Council, or in India the Commander-in-Chief.

R.P., 51 (A) ; K.R., 590.

(*b*) I should order the Court to re-assemble for the revision of the finding and should point out to them that their opinion as expressed in the recommendation to mercy amounts to a finding that the accused was insane, and direct them to revise their finding accordingly.

s. 54 (2), 130 (2) ; R.P., 51 (B), 57 (A).

DECEMBER, 1912.

Captains.

Q. 1. A pay serjeant is unable to account satisfactorily for public money entrusted to him, and it is proposed to try him under Section 17 of the Army Act. There is, however, some ground for believing that the deficiency may be the result of negligence only, and it is proposed to frame an alternative charge. Under what section should this alternative charge be framed?

A 1. Under s. 40. K.R., 557.

Q. 2. You are detailed as President of a District Court-Martial to assemble on the 2nd February, 1913. On the 30th January you receive the documents relative to the cases to be tried, among which is the following charge sheet:—

Charge Sheet.

The accused No. 1,053, Private John Smith, 2nd Bn. Leicestershire Regiment, is charged with—

s. 13 (1) Fraudulent Enlistment,

in that he

at Dover on the 29th January, 1910, when belonging to the 1st Bn. Border Regiment, without having fulfilled the conditions enabling him to enlist, enlisted into His Majesty's Regular Forces for service in the Leicestershire Regiment, thereby obtaining a free kit, value one pound nine shillings and nine pence.

Archibald E. Browne,
Captain and Adjutant,
for Lieut.-Colonel Commanding
2nd Bn. Leicestershire Regt.

Lichfield.
26th January, 1913.

To be tried by District Court-Martial
JOHN WILLIS,
Major, D.A.A.G.,
for G.O.C.-in-Chief,
Western Command.

Chester.
28th January, 1913.

(*a*) Point out anything that you consider to be a flaw in this charge sheet and explain what steps are necessary to rectify any such flaws.

(i.) If noticed by you before the date of trial.

(ii.) If discovered after the trial has commenced.

(*b*) If Private Smith has served in an exemplary manner since he joined the Leicestershire Regiment, how is his liability to trial on the above charge affected?

A. 2 (*a*) The words "a soldier of the Regular Forces" should be added to the description of the accused. R.P., App. I p 649.

As the offence took place more than three years before the date of trial, he cannot be charged with obtaining a free kit.

s. 161.

The charge sheet must be signed by the Commanding Officer, not by the Adjutant for him. R.P., 9, *note*.

(i.) If any of the above flaws were discovered before the trial commenced, the charge sheet could be sent back to the Convening Officer for amendment. R.P. 33 (B).

(ii.) If the flaws are not discovered till after the trial has commenced, the Court could amend the error in the

description of the accused, but the others could not now be amended.

R P., 33.

(*b*) He would not under these circumstances be liable for trial at all on this charge.

s. 161.

N.B.—The Staff Officer, in issuing the General's order for the trial should not sign "for G.O.C.-in-Chief."

Q. 3. You are detailed as President of a District Court-Martial. The order for the assembly of the Court reads as follows:—

.....Orders by.....

Commanding .....1st January, 1913.

No. 9144 Private John Smith, 2nd Bn. Border Regt.

Serjeant Percy Lloyd, 19th Bn. County of London Regt. (T.F.).

The detail of officers mentioned below will assemble at ..... on the 7th January, 1913, for the purpose of trying by District Court-Martial the accused persons named in the margin and such other person or persons as may be brought before them.

President.

Major A. B., 1st Bn. Leicestershire Regiment, is appointed President.

Members.

A Captain, 10th Hussars.

A Subaltern, 2nd Bn. Border Regiment.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to .....

Signed this first day of July (*sic*), 1913.

C. D., Major, D.A.A.G.

(*a*) On what points will it be necessary for the Court to satisfy themselves regarding each

of the members respectively before the accused persons are brought before it?

(*b*) Assuming that the blanks are correctly filled up, is the order convening the Court in any way defective? If so, what steps must be taken to remedy the defect?

A. 3 (*a*) The Court must satisfy themselves that each of the members is eligible, not disqualified. To be eligible he must be subject to Military Law, and have held a commission for two years. He will be disqualified if he is:—

(i.) The Convening Officer.

(ii.) The Prosecutor.

(iii.) A witness for the prosecution.

(iv.) The Officer who investigated the case.

(v.) The Officer who took the summary of evidence.

(vi.) The Company Commander who made the preliminary inquiry.

(vii.) A member of a Court of Inquiry into the facts now forming the charge.

(viii.) The Commanding Officer of the accused.

(ix.) An Officer having a personal interest in the case. R.P., 19, 22 (A).

(*b*) As one of the accused is a member of the Territorial Force, one member of the Court should be an officer of the Territorial Force, or the Convening Officer should state in the Order that it is not practicable to detail one. The Court should send the Order back to have it amended, or for such an officer to be detailed. R.P., 20 (B), 22 (C).

The Regimental number of Serjt. Lloyd should be inserted in the order. The date of signature is given as July instead of January. This is an obvious error, but would invalidate the Order.

R.P., 22 (A).

Q. 4 (*a*) Can a newspaper correspondent accompanying an army in the field who falls into the hands of the enemy claim to be treated as a prisoner of war, and if so, on what conditions?

(*b*) Can any member of the combatant personnel of a belligerent force who falls into the hands of the enemy claim to be exempt from the rules respecting the treatment of prisoners of war, and to be sent back to his army, or to his country, and, if so, under what circumstances?

A. 4 (*a*) Followers of armies, such as newspaper correspondents, can claim to be treated as prisoners of war, provided they have a certificate from the military authorities of the army they are with authorising their presence. Man. XIV. 57.

(*b*) Combatant troops detailed by proper authority, in writing, as a guard to a medical unit can, if captured, claim the privileges accorded by the Geneva Convention 1906, to medical personnel, and are entitled to be sent back to their army or their country. The time and route of their return is at the discretion of the captor.

Man., XIV., 188, 196.

Q. 5. As a Commanding Officer, five soldiers are brought before you, charged respectively with the following offences:—

(*a*) Striking the driver of the canteen contractor's cart, as the latter was leading his horse through the barrack gate.

(*b*) On being ordered by the company orderly serjeant to parade for fatigue, striking that non-commissioned officer.

(*c*) On being warned for fatigue by the company orderly serjeant, saying "You ——, you are always running me for fatigue out of my turn."

(*d*) Being confined in the Guard room, attempting to escape.

(*e*) When on furlough, obtaining a week's extension of the same on the ground that his mother was ill, when in fact she had been dead 10 years.

(i.) State in each case whether you can dispose summarily of the case, or whether it must be referred to superior authority.

(ii.) Is your power to dispose summarily of any of the above cases affected by the fact that the soldiers are on active service, and, if so, how?

A. 5. (i.) (*a*) Can dispose of summarily.

s. 6 (1) (*f*); K.R., 487.

(*b*) Must refer to superior authority.

s. 8; K.R., 487.

(*c*) Can dispose of summarily.

s. 8 (2); K.R., 487.

(*d*) Can dispose of summarily.

s. 22; K.R., 487.

(*e*) Can dispose of summarily.

s. 27 (4); K.R. 457.

(ii.) On active service cases (*a*) and (*c*) could not be disposed of summarily, but must be referred to superior authority. It makes no difference in the other cases. K.R., 487.

Q. 6. (*a*) Private Thomas Williams is arraigned before a District Court-Martial on a charge of offering violence to his superior officer,

Serjeant John Evans. Private Williams elects to give evidence in his own defence. At what stage of the proceedings ought he usually to do so?

(*b*) In the course of his evidence Private Williams makes the following statement:—

"I was insubordinate to Serjeant Evans because he has a down on me ever since I joined the regiment. During the last three months he has got me punished five times for crimes which he knew I hadn't committed. All the company knows he is unfair to me and bullies me, and that he causes nearly all the crime in the company."

(i.) Is this evidence admissible?

(ii.) If admissible, will it have any effect on the procedure at the trial?

A. 6. (*a*) The accused should give his evidence after his first address (if any) and before calling any other witness. He is not bound to do so, but the Court should warn him that the credibility of his evidence may be lessened by his not doing so. **R P**, 41 (B) *and note.*

(*b*) (i.) The accused is allowed great latitude in making his defence and may charge other persons with blame, so that this statement would be admissible as evidence, except the last sentence (about what the company knows), which should be excluded as *evidence*, on the ground that it is merely his *opinion* that the company knew all this, though he would be allowed to state it in any *statement* he made.

R P.. 60 (C); Man.. VI, 63.

(ii.) By imputing bad motives to a witness for the prosecution, he has rendered himself liable to cross-examination, showing that he has been guilty of other offences.

R.P, 80 (3).

MAY, 1913.

Captains.

Q. 1. A copy of the Proceedings of a District Court-Martial is annexed to this paper.

Show in detail what irregularities and illegalities, if any, took place, as shown by the record, and taking each case separately, state what action should be taken by the confirming authority.

A. 1. *It would take up too much space to copy out the whole of the Proceedings referred to above; briefly, however, the errors made and the action to be taken were as under.*

(i.) The pages were not numbered. **Man. p. 706.**

The Confirming Authority should return the Proceedings to the President for amendment. **K.R. 589.**

(ii.) An Officer sat on the Court who had been a member of a Court of Inquiry into the same facts. **R.P.** (B).

The Confirming Authority should withhold confirmation.

s. 54 (5), (6) and *notes;* **K.R., 591.**

(iii.) The Court had declared that R.P. 22 had been complied with, and the President had signed the certificate that he had compared the names of the members of the Court of Inquiry with those detailed to serve on the Court.

R.P., App II., p 679.

The Confirming Authority should point out this error to the President and call upon him for any explanation he may have to offer. **K.R. 589.**

(iv.) The Charge Sheet is not signed by the President, although it is recorded in the Proceedings that he had done so.

R.P., App. II, p. 682; Man., p. 706.

The Confirming Authority should return the Proceedings to the President for amendment. **K.R. 589.**

(v.) The accused had pleaded "*guilty*" to the charge, but from his statement in mitigation of punishment it was evident he did not understand the charge he was pleading to. The Court, however, did not alter the record and try him as though he had pleaded "*not guilty.*"

R.P., 37 (I).

The Confirming Authority should withhold confirmation.

s. 54 (5), (6), and *notes*; K.R. 591.

(vi.) The record does not show that the second witness for the Prosecution was sworn.

R.P., 82 (A)

The Confirming Authority should withhold confirmation, as, even if the witness had been sworn, the record cannot now be amended, but must stand.

s. 54 (5), (6) and *notes*; K.R., 591.

(vii.) It is not shown on the record that the accused had the opportunity of cross-examining either of the witnesses for the Prosecution.

R.P., 39 (D), App II., p 685.

The Confirming Authority should bring the matter to the notice of the President. If the accused has been prejudiced by not having had the opportunity of cross-examination, the Confirming Authority should withhold confirmation.

s. 54 (5), (6) and *notes*; K.R., 589, 591.

(viii.) The sentence is detention and discharge with ignominy. s 44, proviso (4); K.R. 583 viii)

The Confirming Authority should re-assemble the Court to revise their sentence; or if this is impossible he can remit either the discharge with ignominy or the detention, thus making the sentence legal.

s. 54 (2); R.P. 56 (A).

In all the above cases when confirmation has been withheld the Confirming Authority should bring their error to the notice of the Court, in a separate minute, and as the proceedings of the Court will be invalid he can assemble another Court to try the accused.

s. 157 *note*; K.R, 589.

Q. 2. Private Jones, serving at home, is reported absent from tattoo roll call on 7th January, 1913, and returns at 12.30 a.m. on 2nd February, 1913.

(i.) What action is taken in the battalion up to the time he is placed in the guard detention room?

(ii.) Can the Commanding Officer deal with the case?

A. 2. (i.) On the 8th January his kit would be taken to the company store room, and the orderly-serjeant, assisted by the orderly-corporal, would take an inventory of it, noting all deficiencies; this inventory would be signed by them both. The following day a descriptive report of the absentee would be sent to the Editor of the "Police Gazette," a copy being sent to the local police, and to the police of the place where he is supposed to have gone. On the 28th January his name will be published in regimental orders as absent, and as soon as possible after that date a Court of Inquiry will be assembled

to take evidence on oath as to his absence and deficiency of kit (if any). A record of the declaration of the Court will be entered in the regimental books and the Proceedings will then be destroyed. He will then be struck off the strength as a deserter. His kit, except the necessaries, will be sold by auction, and a non-effective account made out by his Company Commander.

s. 72; R.D. Act, ss. 6 (3), 23; R.D. Reg 38; R.P, 125; K.R., 503, 514, 515, 1868.

(ii.) The man would come before his Commanding Officer on a charge of desertion; but if he could prove any facts reducing the offence to that of absence without leave, then the Commanding Officer could deal with the case. s. 15 (1); K.R., 487.

Q. 3. You are in command of a party called out in aid of the civil power. A magistrate orders you to fire on the mob. How far are you responsible for your actions if you comply, or otherwise, with his request?

A. 3 The responsibility will in either case rest on the officer. If he considers it unnecessary to comply with the magistrate's direction, he is not obliged to do so; and if he complies when it was unnecessary to fire he would be held liable for any result of such fire, for no one is compelled to obey an illegal order. The fact, however, that he had been requested by the magistrate to take action would weigh in his favour, at a subsequent trial, to show he had not a *mens rea*, or guilty mind in doing what he did. If on the other hand he omitted to take such action as was necessary he would be held equally liable for such neglect.

Man., XIII., 35; K.R., 964, 965.

Q. 4. A prisoner of war is recognized as a spy. Can he be treated as such?

A. 4 No; a spy who has completed his mission and rejoined his own army, if subsequently captured, must be treated like any other prisoner of war. **Man., XIV., 170.**

Q. 5 A soldier is awarded a regimental entry on active service. In what documents, and by whom, is a record made of the punishment?

A. 5 An entry will at the time of award be made in the man's Field Conduct Sheet, by the Officer Commanding his company, etc, at the end of the war, or if the man returns home sooner, the entry will be copied into his Regimental and Company Conduct Sheets by the Officer in Charge of Records.

K.R., 1922, 1926, 1927.

Q. 6 As a Commanding Officer (a Field Officer), the following are brought before you.

Explain, in each case, what your powers are, and state if the fact of being on active service would affect them.

(i.) A civilian transport driver is accused of using bad language to the transport serjeant.

(ii.) The serjeant cook is accused of neglect of duty.

A. 6 (i.) In peace time the transport driver would not be subject to Military Law, and thus could not be punished by the Commanding Officer or tried by Court-Martial. If the bad language amounted to a civil offence, e.g., obscene language or provoking a breach of the peace, he could be dealt with by a Civil Court. He could also probably be dismissed from his employment;

this, however, would depend on the terms of his engagement. On active service the driver would be subject to Military Law, and although he could not be punished by his Commanding Officer, the latter could remand him for trial by Court-Martial (other than a Regimental Court-Martial).

ss. 176 (9), 184.

(ii.) The cook serjeant could be admonished, reprimanded, or severely reprimanded by his Commanding Officer, or with the sanction of the Brigadier removed from his appointment. In this case it would make no difference whether the offence took place on active service or not.

K.R., 302, 487, 493 (vi), (vii), 499.

DECEMBER 1913.

Captains.

Q. 1. On active service you (a Captain) are in command of a detachment; owing to casualties, you have only one other officer under your command, and he has 2 years' service.

A private soldier is brought before you charged with sleeping on his post. The offence is prevalent and you decide to try him by Court-Martial, and you consider that it is not practicable to apply to higher authority for a Court-Martial to be convened.

(*a*) What nature of Court-Martial can you convene, and why?

(*b*) How would it be constituted? Quote the authority making such a Court a legal tribunal.

(*c*) Who would act as prosecutor?

A. 1. (*a*) A Field-General Court-Martial; because the offence was committed on active service, and because it is not practicable to convene a General Court-Martial.

s. 49 (1); R.P., 105, A. (ii.).

(*b*) It would consist of myself as President and the other officer as Member; because it is not practicable to appoint another officer as President; and since it is not practicable to delay the trial the Court can consist of two members. Such a Court is made legal by s. 49 (1) (*b*) (*c*). **R.P., 106 (B) 107 (A).**

(*c*) A non-commissioned officer, not a material witness for the Prosecution.

R.P., 24, 39 (c), *note 4*.

Q. 2. The Prosecutor in the trial of Private Turner has already been sworn, on the same day, before the same Court, in the trial of Private Johnson. Is it necessary to swear him again when he produces the statement of the character and particulars of service of Private Turner?

A. 2. Yes. A witness must always be sworn, or make a solemn declaration, in the presence of the accused, and during the trial at which he is giving evidence.

R.P., 39 (c), *note 4*; 46 (b), *note 4*; Man., p. 705.

Q. 3. In considering their sentence, where would the members of a Court-Martial obtain guidance as to the nature and degree of the punishment they should award, after satisfying themselves as to the punishment authorized for the offence?

A. 3. Instructions for the guidance of the Court in passing sentence are laid down in K.R., 583.

Q. 4. You are sending an unarmed draft to Southampton for embarkation. One of the number is a soldier undergoing a term of detention. What arrangements would you make for an escort; and what action would be taken by the Embarking Staff Officer with reference to your provision?

A. 4. An escort of one non-commissioned officer and one man would be detailed and supplied with sidearms and belts. On arrival at Southampton, the Officer Commanding the draft would hand over the sidearms and belts to the Embarking Staff Officer, who would arrange with the local Ordnance Officer to have them returned to the unit from which the draft came. **K.R., 626.**

Q. 5. A prisoner of war declines to give his name, rank, and regiment. How far is he justified in his refusal, and what penalty does he render himself liable to?

A. 5. He is bound to give his rank and name. If he refuses he is liable to forfeit the privileges granted to prisoners of his rank. He is not bound to give his regiment. **Man. XIV., 67, 68.**

Q. 6. (i.) As Commanding Officer (a Field Officer), a private soldier is brought before you charged with drunkenness unaccompanied by another offence. Under what circumstances can you—

(*a*) Award him confinement to barracks?
(*b*) Award him detention?
(*c*) Remand him for trial by District Court-Martial?

(ii.) Can a Commanding Officer deal summarily with a non-commissioned officer charged with drunkenness, and could he award a fine?

A. 6. (i.) (*a*) Confinement to Barracks could be awarded for *any* offence of drunkenness; but if it were a case of *simple* drunkenness, should only be added to the fine if the circumstances increase the gravity of the offence.

(*b*) Detention should only be given when the man is liable to trial, or when the amount of his unpaid fines is 20/- or upwards.

(*c*) He can only be tried by Court-Martial if the offence was committed on active service or when he was on duty, or warned for duty, or if he was unfit for duty through his drunkenness, or unless he has four previous cases in the year; or if he claims a Court-Martial instead of being dealt with by his Commanding Officer. **s. 46 (3), (8); K.R., 497.**

(ii.) He can deal summarily with a non-commissioned officer but cannot award a fine.

s. 183 (1); K.R., 493, 499.

Q. 7. A copy of the Proceedings of a District Court-Martial is annexed to this paper.

Point out six irregularities or illegalities in the Proceedings.

A. 7. *It would take up too much space to copy out the whole of the Proceedings referred to above; briefly, however, the errors were as under.*

(i.) The pages were not numbered. **Man., p. 706.**

(ii.) No officer of the Territorial Force was detailed as member, nor did the Convening Officer state in the order convening the Court that none were available, although the accused was a member of the Territorial Force.

R.P., 20 (B).

(iii.) The charge sheet does not state under what circumstances the accused was subject to military law.

s. 176 (6A); R.P., 10, App. I. (1).

(iv.) The first charge is bad. The accused is charged under s. 18 (4) for "stealing goods belonging to a regimental institution," in that he stole cigarettes belonging to the Norfolk Regiment's branch of the Royal Army Temperance Association. It has been ruled that the Army Temperance Association is *not* a regimental institution. The charge should therefore have been laid under s. 41. The value of the articles was not stated in the particulars. **s. 18,** ***notes*** *7, 10, 11.*

(v.) The particulars of the second charge do not show that the superior whom the accused struck (a Corporal of the Territorial Force) was subject to military law at the time. This is, however, one of the ingredients

necessary to constitute the offence and should therefore be stated in the particulars.

R.P., App. I. (17).

(vi.) The sections of the Army Act under which the accused was tried were not entered in red ink in the margin of the charge sheet.

Man., p. 703.

(vii.) The charge sheet was signed by a Major *for* Colonel Commanding. It must be signed by the actual Commanding Officer.

R.P., 9 *note;* **Man., p. 703.**

(viii.) The first witness for the Prosecution states that a Colour-Serjeant of the accused's Battalion showed him some cigarettes "which had been found in the accused's kit bag." This statement is inadmissible, being hearsay.

Man., VI., 46.

(ix.) The fourth witness for the Prosecution states that "Lieut. Noble told me some cigarettes had been stolen," etc. This also is hearsay and inadmissible. **Man., VI., 46.**

(x.) The stolen cigarettes found in the accused's kit bag should have been produced in Court and identified by the first witness. This *real* evidence would have been the best, which must always be given.

Man., VI., 46; Powell, p. 8.

(xi.) The witness for the defence states "I do not think he is the kind of man who would do such a thing." This statement is mere opinion and as such inadmissible.

Man., VI., 63.

(xii.) The sentence being less than six months should have been awarded in days.

K.R., 585.

(xiii.) The accused should also have been sentenced to discharge with ignominy.

K.R., 583 (iv.).

APRIL, 1914.

Captains.

Q. 1. The accused has elected to be tried by District Court-Martial, instead of submitting to the award of his Commanding Officer.

(1) Where must the fact be recorded?

(2) How is the fact brought to the notice of the Court?

(3) What effect should the knowledge have on the Court?

(4) Is his position before trial in any way different from that of a man who has been remanded by his Commanding Officer for trial by District Court Martial?

A. 1. (1) It is recorded in red ink at the top of the Application for Trial (A.F. B 116), and at the top of the charge sheet.

A.F. B 116 *note :* **Man. p. 703.**

(2) The Court can see the record of the fact on the charge sheet; and the Prosecutor so informs them just before the arraignment.

R.P. App. II. p. 682.

(3) The fact should not lead them to give a heavier punishment; they should remember that the Commanding Officer had proposed to deal with the case, and therefore as a rule they should not give a heavier punishment than he could have awarded.

K.R., 583 (i); Man. v. 80.

(4) He may be released from arrest pending trial, if his Commanding Officer considers the circumstances of the case warrants it.

K.R., 490 (4).

Q. 2. As a Commanding Officer not on active service, the following are brought before you charged with the offences stated:

(1) During a general fight in a barrack room, Private Johnson, who was taking part in the disturbance, was ordered by the Adjutant into arrest. Saying "I did not begin it, and it has nothing to do with you," Private Johnson again entered the fray.

(2) Private Thomas, attending hospital with an injury to his hand, removed the bandage, and so delayed the cure.

(3) Private Davis stole 10s. from a hawker's barrow in barracks.

(4) On being told by Lance-Corporal Smith to clean the barrack-room windows, Private Lamb said to him: "If you go on worrying me, I'll —— well do you in."

State in each case whether you can dispose of the case summarily, or whether it must be referred to superior authority.

A. 2. (1) The Commanding Officer can dispose of this case, which is against s. 8 (2).

s. 9., *note* 8; K.R. 487.

(2) The Commanding Officer can dispose of this case, which is against s. 18 (3).

(3) The Commanding Officer cannot dispose of this case, which is against s. 41 (5).

K.R., 487.

(4) The Commanding Officer can dispose of this case, which is against s. 8 (2). K.R. 487.

Q. 3. With what object was the punishment of "detention" introduced?

A. 3. To avoid inflicting on soldiers the stigma of having undergone imprisonment for purely military offences, which are not disgraceful, and would not be offences under the ordinary law. K.R. 583 (iv.); Man. III. 36.

Q. 4. A soldier is deficient of the following, but there is no evidence of his having made away with them. Under what section of the Army Act could he be charged in each case?
(*a*) His rifle.
(*b*) Two blankets.
(*c*) His medals.

A. 4. (*a*) Under s. 24 (2). K.R. 562.
(*b*) Under s. 24 (2). s. 24, *note* 5; K.R. 562.
(*c*) This is not an offence. s. 24, *note* 9; K.R., 562.

Q. 5. (*a*) What interval should elapse between an accused person being warned for trial and his arraignment before a District Court-Martial?
(*b*) Can this interval be reduced, and, if so, by whose authority and under what conditions?

A. 5. (*a*) Not less than 24 hours. R.P., 14 (A).
(*b*) If military exigencies render it necessary, the Convening Officer or the Senior Officer on the spot may make a declaration specifying the nature of the exigencies, and reduce this interval; provided that the accused must have a reasonable opportunity of preparing his defence.
R.P., 104 and *notes*.

Q. 6. Your Orderly-Room Serjeant has been removed from his appointment, and his company (or squadron) commander reports to you as Commanding Officer that he is quite ignorant of the ordinary duties of his rank.

What action can you take in the matter?

A. 6. Apply to the Brigade Commander to have him reduced by the Army Council or Commander-in-Chief in India. s. 183 (2); K.R., 303.

Q. 7. You capture one of the enemy's field ambulances. Can the medical personnel be considered prisoners of war, and can their horses and equipment be taken from them?

A. 7. No they cannot be considered prisoners of war, nor can their horses or equipment be taken.

Q. 8. Point out four illegalities or irregularities in the copy of the Proceedings of District Court-Martial which has been issued to you:—

A. 8. *It would take up too much space to copy out the whole of the Proceedings referred to above; briefly, however, the errors were as under:—*

(i.) The pages were not numbered. Man. p. 706.

(ii.) One member was disqualified, as he had taken the summary of evidence. R.P., 19 (A).

(iii.) The charge was wrongly framed. It should have been embezzlement, and not theft. Man. VII., 56 59.

(iv.) The officer who took the summary of evidence did not certify that the provisions of R. P. 4 (C) (D) (E) had been complied with. Man., p. 704.

(v.) The accused pleaded "guilty," but his statement in the summary of evidence

showed that he did not intend to admit the charge. The Court should, therefore, have altered his plea and tried him on a plea of "not guilty."

R.P., 37 (D).

(vi.) The summary of evidence was initialled only by the President, without being signed. **Man., p. 706.**

(vii.) The summary of evidence was put up in the Proceedings after the charge sheet, instead of at the end. **Man. p. 706.**

(viii.) The third witness for the Prosecution states that "I heard afterwards that Captain Smith had to start without the money." This statement is inadmissible, being hearsay. **Man. VI., 46.**

(ix.) The fourth witness for the Prosecution states that Captain Smith ordered him to confine the accused "as he had stolen £1 from him." This alleged reason is hearsay, and therefore inadmissible.

Man. VI., 46.

(x.) If the Court had altered the plea to "not guilty," as they should have done, they could have cured the defect in the charge sheet by finding the accused guilty of embezzlement. **s. 56 (1).**

(xi.) The Court sentenced the accused to detention instead of imprisonment.

K.R., 83 (ii).

(xii.) All the members signed the Proceedings, instead of only the President doing so.

R.P., 50, and App. II., p. 697.

Law
Const
B2195m.3

Banning, Stephen Thomas
Military law made easy.
Ed.11.

241185

DATE

NAME OF BORROWER

University of Toronto
Library

DO NOT
REMOVE
THE
CARD
FROM
THIS
POCKET

Acme Library Card Pocket
Under Pat. "Ref. Index File"
Made by LIBRARY BUREAU

EXCELSIOR PRINTING WORKS
GT
PARK
LONDON E.14